

No. 11619

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOSEPH PITTA,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California.  
Southern Division

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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Appellant's Designation of Contents of Record on.....	41
Certificate of Clerk to Transcript of Rec- ord on .....	42
Designation of Portions of Records Deemed Necessary for Consideration on.....	166
Notice of.....	39
Statement of Points on.....	163
Appellants Designation of Contents of Record on Appeal .....	41
Certificate of Clerk to Transcript of Record on Appeal .....	42
Defendant Joseph Pitta's Plea of Not Guilty Entered .....	34
Designation of Portions of Records Deemed Necessary for Consideration on Appeal.....	166
Indictment .....	2
Judgment and Commitment.....	37
Names and Addresses of Attorneys.....	1
Notice 5/6/47.....	41
Notice of Appeal.....	39

INDEX	PAGE
Order Granting Motions for Severance of Trial, and Trial of Defendant Joe Pitta.....	34
Reporter's Transcript.....	43
Statement of Docket Entries.....	40
Statement of Points on Appeal and Designa- tion of Parts of Records Necessary for the consideration Thereof .....	163
Statement of Points on Appeal.....	163
Stipulation Dispensing with Printing of Orig- inal Exhibits .....	166
Verdict .....	36
Witnesses, Government:	
Briscoe, Elmer A.	
—direct .....	107
—cross .....	108
Grady, William H.	
—direct .....	92
—cross .....	96
McGuire, Thomas E.	
—direct .....	51
—cross .....	65
Mallory, G. E.	
—direct .....	49
—cross .....	51

## INDEX

## PAGE

## Witnesses, Defendant:

Bruno, Nino

—direct .....	120
—cross .....	124
—redirect .....	130, 133
—recross .....	131

Gibbs, Robert

—direct .....	135
---------------	-----

Gubin, Irving

—direct .....	137
—cross .....	148
—redirect .....	149

Pitta, Joseph

—direct .....	151
—cross .....	152



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Jury Trial before the

Honorable Louis E. Goodman, District Judge.



In the Southern Division of the United States  
District Court for the Northern District of  
California

No. 30449-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT BRUNO, FRANK FLIER, SALVA-  
TORE BILLECI, RENALDO FERRARI,  
RICHARD BENSON, MIKE J. BILLECI,  
JOHN CHRISTOPHER, JOHN ORMAN  
KNIGHT, JOSEPH PITTA, SAMUEL  
LOUIS COHEN, STANLEY PALIWODA,  
HENRY GOURDIN, MILLARD DAVIS,  
PAUL CRIVELLO, JOHN TERNULLO,  
HARRY FISHER, and FRANK ARRIOLA,  
Defendants.

## INDICTMENT

### First Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury charges: That Vincent Bruno and Renaldo Ferrari, on or about the 5th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approxi-

mately one dram of heroin, and the said heroin had been imported [2\*] into the United States of America contrary to law, as said defendants then and there knew.

### Second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Salvatore Billeci, on or about the 5th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

### Third Count

(Harrison Narcotic Act, 26 U.S.C., Secs. 2553 and 2557)

The Grand Jury further charges: That Frank Flier, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity par-

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

ticularly described as one bindle containing approximately one dram of heroin.

#### Fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Millard Davis, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported [3] into the United States of America contrary to law, as said defendant then and there knew.

#### Fifth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Salvatore Billeci and Millard Davis on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.



## Sixth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Salvatore Billeci, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as nine bindles containing approximately nine drams of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Seventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing [4] approximately one ounce of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Eighth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 7th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as defendant then and there knew.

## Ninth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 7th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

## Tenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent

Bruno, on or about the 7th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in [5] quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Eleventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

#### Twelfth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Richard Benson, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of



California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Thirteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a [6] derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Fourteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit,

a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Fifteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Sixteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did [7] conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States

of America contrary to law, as said defendants then and there knew.

#### Seventeenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Eighteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.



## Nineteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 10th day of January, 1946, in the City and County of [8] San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Twentieth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and John Orman Knight, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Twenty-first Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Mike J. Billeci, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Twenty-second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier, and Mike J. Billeci, [9] on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.



## Twenty-third Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Joseph Pitta, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Twenty-fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Joseph Pitta and Millard Davis, on or about the 11th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew. [10]

## Twenty-fifth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 11th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

## Twenty-sixth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Twenty-seventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent

Bruno, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said [11] defendant then and there knew.

Twenty-eighth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-ninth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently



and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

### Thirtieth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported [12] into the United States of America contrary to law, as said defendants then and there knew.

### Thirty-first Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit,

a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

### Thirty-second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That John Orman Knight, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

### Thirty-third Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Harry Fisher, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in [13] quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin

had been imported into the United States of America contrary to law, as said defendants then and there knew.

#### Thirty-fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Arriola, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

#### Thirty-fifth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier and John Orman Knight, on or about the 16th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the



United States of America contrary to law, as said defendants then and there knew.

Thirty-sixth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did [14] conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-seventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Thirty-eighth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Thirty-ninth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Renaldo Ferrari, on or about the 17th day of January, 1946, in the City and County of [15] San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.



## Fortieth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier and Renaldo Ferrari, on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

## Forty-first Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

## Forty-second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank

Flier, [16] on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle, containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Forty-third Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 29th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin, had been imported into the United States of America contrary to law, as said defendant then and there knew.

#### Forty-fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 30th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and

knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew. [17]

Forty-Fifth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Samuel Louis Cohen, on or about the 30th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-Sixth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 31st day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and



preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-Seventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Stanley Paliwoda, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported [18] into the United States of American contrary to law, as said defendants then and there knew.

Forty-Eighth Count

(Jones-Miller Act. 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, John Orman Knight and Henry Gourdin, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of

heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

#### Forty-Ninth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Henry Gourdin, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

#### Fiftieth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in [19] quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

## Fifty-First Count

(Harrison Narcotic Act, 26 U.S.C., Secs. 2553  
and 2557)

The Grand Jury further charges: That Frank Flier, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle contained approximately one dram of heroin.

## Fifty-Second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Millard Davis, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

## Fifty-Third Count

(Harrison Narcotic Act, 26 U.S.C., Secs. 2553  
and 2557)

The Grand Jury further charges: That Frank



Flier, on or about the 3rd day of February, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, [20] a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin.

Fifty-Fourth Count

(Jones-Miller Act, 21 U.S.C., 174)

The Grand Jury further charges: That Stanley Paliwoda, on or about the 3rd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifty-Fifth Count

Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier, Salvatore Billeci, Renaldo Ferrari and Samuel Louis Cohen, on or about the 21st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the con-

concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bundle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Fifty-Sixth Count

(Conspiracy, 18 U.S.C., Section 88)

The Grand Jury further charges: That Vincent Bruno, Frank Flier, Salvatore Billeci, Renaldo Ferrari, Richard Benson, Mike J. Billeci, John Christopher, John Orman Knight, Joseph Pitta, Samuel Louis Cohen, Stanley Paliwoda, Henry Gourdin, Millard Davis, Paul Crivello, John Ternullo, Harry Fisher and Frank Arriola, at a time and place to the said Grand Jury unknown, did feloniously [21] conspire together and with other persons whose names are to said Grand Jury unknown, to receive, conceal, buy, sell and facilitate the transportation and concealment of a derivative and preparation of morphine, to-wit, heroin, which had been imported into the United States of America contrary to law, as said defendants then and there knew, in violation of Section 174, Title 21, United States Code; that thereafter and during the existence of said conspiracy, one or more of said defendants hereinafter mentioned by name, in the City and County of San Francisco, State of California, within said Division and District, and at other places as hereinafter alleged, did the fol-



lowing acts in furtherance of and to effect the object of the conspiracy aforesaid:

1. On January 5, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Vincent Bruno removed a bindle of heroin from underneath a beer case. At that time and place he held a conversation with the defendant Salvatore Billeci.

2. On February 6, 1946, the defendants Vincent Bruno and Salvatore Billeci left the United States of America and entered the United States of Mexico at Calexico, California.

3. On January 12, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Flier held a conversation with the defendant Millard Davis.

4. On January 6, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Flier received an unknown amount of currency from the defendant Millard Davis.

5. On January 6, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of [22] San Francisco, State of California, the defendant Salvatore Billeci poured the contents of eight or nine bindles of heroin into another package.

6. On February 2, 1946, the defendants Salvatore Billeci and Vincent Bruno entered the United

States of America from the United States of Mexico at Calexico, California.

7. On March 1, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Renaldo Ferrari held a conversation with the defendants Vincent Bruno and Frank Flier, and at that time the defendant Renaldo Ferrari received an unknown amount of currency from the defendant Frank Flier.

8. On January 8, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Richard Benson removed a bindle of heroin from the shelf of the storeroom.

9. On January 10, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Mike J. Billeci had a conversation with the defendants Frank Flier and Vincent Bruno.

10. On January 17, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Christopher held a conversation with the defendant Frank Flier.

11. On January 14, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Orman Knight held a conversation with the defendant Frank Flier.

12. On January 15, 1946, at the premises known

as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Orman Knight [23] removed a bindle of heroin from a fuse box in the hallway and put the bindle in his pocket.

13. On January 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Joseph Pitta held a conversation with the defendants Vincent Bruno and Frank Flier.

14. On January 31, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Samuel Louis Cohen received a bindle of heroin from the defendant Frank Flier.

15. On February 1, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Stanley Paliwoda had a conversation with the defendant Frank Flier.

16. On February 13, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Stanley Paliwoda had a conversation with the defendant Vincent Bruno.

17. On February 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Henry Gourdin had a conversation with the defendants Frank Flier, John Orman Knight and Vincent Bruno.



18. On January 12, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Millard Davis held a conversation with the defendant Frank Flier.

19. On February 2, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Millard Davis [24] received a bindle of heroin from the defendant Frank Flier and concealed it on his person.

20. On January 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Paul Crivello received an unknown amount of currency from the defendant Frank Flier.

21. On February 11, 1946, at the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Ternullo had a conversation with the defendants Vincent Bruno, Renaldo Ferrari and Frank Arriola. Thereafter, on the same day, he drive in his automobile to the vicinity of Geary and Divisadero Streets, in the City and County of San Francisco, State of California.

22. On February 26, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Ternullo had a conversation with the defendant Frank Flier.

23. On January 15, 1946, in the premises known

as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Harry Fisher received a bindle of heroin from the defendant Frank Flier.

24. On February 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Arriola had a conversation with the defendants Vincent Bruno, Renaldo Ferrari and John Ternullo.

A True Bill.

ARTHUR J. KAHN,

Foreman.

/s/ FRANK J. HENNESSY,

United States Attorney.

(Approved as to form: R. B. McM.)

Bail, \$2500.00 each.

[Endorsed]: Presented in open court and filed:  
Sept. 18, 1946.

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[Title of District Court and Cause.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday the 2nd day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Louis E. Goodman,  
District Judge.

DEFENDANT JOSEPH PITTA'S PLEA OF  
NOT GUILTY ENTERED

This cause came on regularly this day for hearing on motion for separate trials, also for entry of plea of defendant Vincent Bruno, et al. Daniel C. Deasy, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendants herein and their attorneys were present as heretofore. Defendants x x x and Joseph Pitta each entered a plea of "Not Guilty" to the Indictment filed herein, which said pleas were ordered entered. [26]

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[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 22nd day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,  
District Judge.

ORDER GRANTING MOTIONS FOR SEVER-  
ANCE OF TRIAL, AND TRIAL OF DE-  
FENDANT JOE PITTA

The defendants and their attorneys being present, the cases of these defendants came on regularly this day for trial. After hearing the attorneys



herein, the Court advising the parties hereto that the motions for severance of trial had been granted, and James T. Davis, Esq., Assistant United States Attorney, advising the Court that it was the intention of the United States Attorney to proceed with substantive offenses contained in the Indictment and not the conspiracy charge, the Court thereupon ordered that the case of defendant Joe Pitta proceed to trial.

The defendant Joe Pitta was present in Court with his attorneys, William Klein, Esq., and Roger Brame, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States. Thereupon the following named persons, viz:

Albert R. Dunlap

Mrs. Addie L. Roberts

Miss Loretta J. Noethig

John H. Fisher

Mrs. Martha A. Buckingham

Vincenzo D'Amico

Mrs. S. Louisa Alexander

Mrs. Hermine A. Bulgures

Nevile Osborn, Jr.

Mrs. Caroline A. Wilhelmi

Lavell S. Durrell

Mrs. Sadye J. B. Greenberg

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein. Mr. Davis made an opening statement to the Court and Jury. G. E. Mallory, Thomas E. McGuire, William H. Grady

and Elmer A. Briscoe were sworn and testified on behalf of the United States. Mr. Davis introduced in evidence and filed U. S. Exhibits Nos. 1, 2, 3. Mr. Klein offered for identification certain exhibits which were marked Defendant's Exhibits A, B, C, D for identification. The United States then rested. The hour of adjournment having arrived, it is Ordered that the further trial of this case be continued to April 23, 1946, at 9:30 a.m. [27]

I Hereby Certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled case.

Attest my hand and seal of said District Court, this 19th day of May, A.D. 1947.

[Seal]                      C. W. CALBREATH,  
Clerk.

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division

No. 30449G

THE UNITED STATES OF AMERICA,

vs.

JOE PITTA.

### VERDICT

We, the Jury, find as to the defendant at the bar as follows: Guilty as to Count 23 of the Indictment.

L. S. DURRELL,  
Foreman.

[Endorsed]: Filed Apr. 23, 1947. [28]

District Court of the United States for the Northern  
District of California, Southern Division

No. 30449 G

UNITED STATES OF AMERICA,

vs.

JOSEPH PITTA.

JUDGMENT AND COMMITMENT

On this 23rd day of April, 1947, came the attorney for the government and the defendant appeared in person and with counsel.

It is adjudged that the defendant has been convicted upon his plead of not guilty and a verdict of guilty of the offense of Jones-Miller Act, 21 U. S. C., Section 174, in that defendant did on or about January 10, 1946, in San Francisco, California, unlawfully conceal and facilitate the concealment of a certain lot of heroin, as charged, in Count 23 of Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years and pay a fine to the United States of America in the sum of one Dollar (\$1.00) on County Twenty-three of the Indictment.



It is recommended by the Court that the defendant receive any needed hospitalization in a Narcotic Hospital during period of imprisonment, and if defendant be discharged from said Narcotic Hospital prior to expiration of the Two (2) Year term of imprisonment imposed herein and the defendant be eligible for parole, it is the further recommendation of the Court that the defendant be paroled.

It is further ordered that all remaining counts contained in the Indictment be dismissed as to defendant Joseph Pitta.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LOUIS E. GOODMAN,  
United States District Judge.

Examined by:

JAMES T. DAVIS,  
Asst. U. S. Attorney.

The Court recommends commitment to U. S. Penitentiary.

Filed and entered this 23rd day of April, 1947,  
C. W. Calbreath, Clerk; L. R. Elkington, Deputy Clerk.

A True Copy. Certified this 23rd day of April, 1947.

/s/ C. W. CALBREATH,  
Clerk.

Entered in vol. 38 Judg. and Decrees at page 88.

In the Southern Division of the United States  
District Court for the Northern District of  
California.

No. 30449G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PITTA, et al.,

Defendants.

### NOTICE OF APPEAL

Name and address of appellant: Joseph Pitta,  
San Francisco County Jail, San Francisco, Cali-  
fornia.

Name and address of appellant's attorney: James  
B. O'Connor, Balfour Building, 351 California  
Street, San Francisco, California.

Offense: Title 21 U. S. C. A., Section 174.

Concise statement of judgment, etc.:

Appellant was found guilty by verdict of jury  
on April 23, 1947, of Count 23 of indictment:

The appellant was sentenced to serve a term of  
two (2) years in an institution of the penitentiary  
type and to pay a fine of One (\$1.00) on April 23,  
1947.

Name of Institution where now confined: San  
Francisco County Jail, San Bruno Branch, San  
Bruno, California.

I, the above-named appellant, hereby appeal to

the United States Circuit Court of Appeal for the Ninth Circuit from the above stated judgment.

May 1, 1947.

JOSEPH PITTA,  
Appellant.

[Endorsed]: Filed May 1, 1947. [31]

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[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES

1. Indictment or information for 21 USC 174 Jones-Miller Act, 26 USC 2553 & 2557 Harrison Narcotic Act.

Filed Sept. 18, 1946.

2. Arraignment: Oct. 10, 1946.

3. Plea to indictment or information: Not Guilty Dec. 2, 1946.

4. Motion to withdraw plea of guilty denied.

5. Trial by jury, or by court if jury waived: Apr. 22, 1947.

6. Verdict or finding of guilt: Apr. 23, 1947. Adjudged guilty to Ct. 23.

7. Judgment—(with terms of sentence) or order: 2 yrs. in U. S. Pen. and a fine of \$1.00.

Entered Apr. 23, 1947.

8. Notice of appeal filed May 1, 1947.

Dated May 1, 1947.

Attest:

C. W. CALBREATH,  
Clerk.

[Endorsed]: Filed May 1, 1947. [32]



[Title of District Court and Cause.]

NOTICE

To: Frank J. Hennessy,  
U. S. Attorney.

You are hereby notified that a judgment was entered of record in this office in the above-entitled case.

You are hereby notified that on May 1, 1947, a Notice of Appeal was filed by Joseph Pitta in the above entitled case. A copy of which is enclosed herewith.

C. W. CALBREATH,  
Clerk, U. S. District Court.

San Francisco, California, May 6, 1947.

[Endorsed]: Filed May 6, 1947. [33]

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[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF CON-  
TENTS OF RECORD ON APPEAL

Now comes the appellant, Joseph Pitta, and does hereby designate the complete record and all the proceedings and evidence in the above-entitled action as the contents of his record on appeal.

Dated: May 13, 1947.

/s/ JAMES B. O'CONNOR,  
Attorney for Appellant.

[Endorsed]: Filed May 13, 1947. [34]

District Court of the United States, Northern  
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of The United States of America, Plaintiff, vs. Joseph Pitta, Defendant, No. 30449 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$13.60 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 3rd day of June, A. D. 1947.

[Seal]

C. W. CALBREATH,  
Clerk,

By /s/ M. E. VAN BUREN,  
Deputy Clerk. [35]

In the Southern Division of the United States  
District Court for the Northern District of  
California

Before: Hon. Louis E. Goodman, Judge

No. 30,449

UNITED STATES OF AMERICA,

vs.

JOSEPH PITTA,

Defendant.

REPORTER'S TRANSCRIPT

Tuesday, April 22, 1947

Counsel Appearing:

For the United States: James T. Davis, Esq.,  
Assistant United States Attorney.

For Defendant: Roger Brame, Esq., William  
Klein, Esq. [1\*]

(A jury was duly impaneled and sworn to  
try the cause, after which the following pro-  
ceedings were had:)

The Court: Now, ladies and gentlemen, the  
taking of evidence in this case will be postponed  
until this afternoon at two o'clock. I will ask you  
to return at that time, and I shall also caution you  
at this time during your absence it will be your duty  
not to talk about the case among yourselves nor with  
anybody else, nor to form or express any opinion  
concerning the case until it is finally submitted to

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\*Page numbering appearing at top of page of original Reporter's  
Transcript.



you. We will resume the trial of the case at two o'clock.

(An adjournment was thereupon taken until 2:00 o'clock p.m.) [2]

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Afternoon Session, April 22, 1947, 2:00 P.M.

The Clerk: United States vs. Pitta.

Mr. Davis: Ready.

Mr. Klein: Ready.

The Court: Do you wish to make an opening statement?

Mr. Davis: Yes, a short one.

Mr. Klein: If it please your Honor, before the opening statement is made, may I respectfully ask that the witnesses for the Government be excluded from the courtroom?

The Court: Do you have any witnesses aside from Mr. Grady?

Mr. Davis: Yes, I will ask that Mr. Grady remain, and that the chemist, Mr. Mallory remain. You have no objection to that?

Mr. Klein: None, at all.

The Court: All witnesses except Mr. Grady and Mr. Mallory will remain outside the courtroom until called.

Mr. Davis: Your Honor, and ladies and gentlemen of the jury, I have no intention of taking up a great deal of your time with a lengthy opening statement, because essentially this case is a very simple one, and very simple on the facts. It is briefly this: The defendant is charged in one count

of a long indictment that on the 10th day of January, 1946, in the City and County of San Francisco, that he fraudulently and knowingly did conceal and facilitate the concealment of a [3] derivative and preparation of morphine, to-wit, a lot of heroin in an amount particularly described as one bindle, containing approximately one dram of heroin. A bindle is normally a small package about the length of a razor blade, and slightly wider than one half the width of a razor blade. His Honor will instruct you on the law of the case, and I believe you will be instructed, because it is the law, that when a defendant is shown to have had possession of the narcotics, that possession——

Mr. Klein: If it please your Honor, I object to the statement of the District Attorney in an opening statement. I do not think that is proper in an opening statement.

Mr. Davis: I will withdraw it, your Honor. I usually do it in narcotics cases, because of the peculiarity of the language of the statute, so that while the jury is deliberating or, rather, weighing the evidence, it always seemed to me to be very helpful if they knew exactly what they were dealing with—in other words, what the specific charge is—and I think that since the statute uses the words “conceal” and “facilitate the concealment,” it is helpful to the jury, and I do not believe injurious to the defendant, if the jury is apprized beforehand that actually the principal fact they are concerned with is the possession of the narcotics, but if counsel objects I do not want to press it. But I do not see

how it prejudices the defendant. In any event, if he does not think that it should be stated, I do not want to raise any technicalities in this case, because, as I say, it is a very simple case.

In any event, ladies and gentlemen, what the Government is prepared to show is as follows: That the agents, acting upon previous information that a certain bar in San Francisco, the Star Dust Bar, on Sutter Street—that narcotics were being dealt in there, sold and dispensed. They went up, and over a period of, I believe, approximately two months, maintained an observation post in a room next to the basement storeroom of the Star Dust Bar. The agents will describe to you the location of the room from which they observed everything that went on in the storeroom and the length of time over which they maintained their surveillance.

In this particular case they were in there on the 10th day of January at their observation post. I think we will find some of the agents were in and out at different times, but I think the evidence will show that at some time—at all times there was at least one agent in that storeroom watching the premises, or, rather in the observation room watching the storeroom. They will testify that at a certain time on that day another man, other than the defendant, who is not on trial here today, placed this bindle of heroin beneath certain beer cases which were stacked in rows along the wall and floor of this storeroom, that after this man went out and there was no [5] one in the room, the agents went in, took that bindle from its hiding place, opened



it, abstracted some of its contents, folded the bindle again, and put it back in its hiding place; that they took the contents which they had abstracted and delivered them to the Government chemist of the United States Treasury Department, who will testify that the substance which was delivered to him, and the substance which had been removed from the bindle, was heroin. The agents will then testify cumulatively again, as I say, that at all times from the time that bindle was placed there, and from the time they took out the sample, it was kept under constant observation, and that no one else came and removed that bindle or touched the bindle, or could have altered its contents or added or abstracted anything from it until later on in that day, or I believe in the early part of the evening, the defendant in this case and another defendant, who has been dismissed from this particular case, because he happens to be convicted——

Mr. Klein: Just a moment. If it please your Honor, I respectfully submit that it is improper to make any reference to this defendant who has been convicted at this stage of the proceedings. I except to the remarks of counsel.

Mr. Davis: I am entitled, your Honor, to show what the evidence is going to show, that another man named in this indictment was in the room with the defendant at that time, to explain why he is not on trial, and I have told the jury [6] he is convicted of some other offense. I am not telling them that he is convicted of this offense. That certainly is not prejudicial to the defendant, and it is some-

thing the Government is entitled to introduce to explain to the jury why we haven't the other man who is involved in this offense on trial.

Mr. Klein: I respectfully urge my objection.

The Court: I will overrule the objection.

Mr. Davis: So that he enters with this other man, they remove the bindle from its hiding place, and they both used the contents or portions of the contents of that bindle—in other words, they both used heroin there in that room. I believe they had some conversation. I am not certain whether they did, or if they did, if it is all pertinent in this case. In any event, they removed that bindle, used the contents or portions of it, and put the bindle back in its hiding place, and then they left the room. That is the substance of this case. The charge is that the defendant on that day, and in that place, concealed and facilitated the concealment of heroin, and having proved the facts which I have outlined to you, ladies and gentlemen, I will ask that you return a verdict of guilty as charged.

Do you wish to reserve your opening statement?

Mr. Klein: Yes, I do.

Mr. Davis: May I call a witness out of order, your Honor? [7]

The Court: Yes.

G. E. MALLORY

called as a witness on behalf of the Government;  
sworn.

Q. (By the Clerk): Will you state your name  
to the court and jury?           A. G. E. Mallory.

Direct Examination

By Mr. Davis:

Q. Mr. Mallory, what is your occupation?

A. Chemist, employed by the U. S. Treasury Department, Bureau of Internal Revenue.

Q. How long have you been engaged in that  
occupation?           A. 26 years.

Q. In the course of your occupation do you have  
occasion, at the request of the Narcotic Bureau of  
the Federal Government, to examine the contents  
of certain packages which are turned over to you?

A. Yes, sir.

Q. Do you perform certain tests to determine  
the contents?           A. Yes, sir.

Q. Did you bring with you today a package  
which had been so examined by you?

A. Yes, sir.

Q. May I see it?

A. (Handing a package to Mr. Davis.) [8]

Q. I will show you this small white paper and  
ask you from whom you received that.

A. I received that from the Bureau of Narcotics  
—Narcotic Agent Briscoe.

Q. Can you state when you received it?

A. It was on the 15th day of January, 1946.



(Testimony of G. E. Mallory.)

Q. Did you perform the tests which you have mentioned upon the contents of that package?

A. Yes, sir.

Q. Can you tell us from those tests what that package contained?

A. The package contained 3 grains of heroin hydrochloride,

Q. Has that package been continuously in your possession since the time you received it from Agent Briscoe until it was introduced in court here today?

A. Yes, sir.

Mr. Davis: If the Court please, I will ask that this small package, white paper package previously shown to the witness, be marked Government's Exhibit first in order for purposes of identification.

(The package in question was thereupon marked U. S. Exhibit 1 for Identification.)

Q. (By Mr. Davis): I will show you this envelope marked among other things, "Laboratory No. 152,489," and ask you if that is the envelope in which you placed Exhibit No. 1 for Identification? [9]

A. Yes, sir.

Q. After you had examined it?

A. Yes, sir.

Mr. Davis: If the Court please, I offer this envelope, "Treasury Department, Bureau of Narcotics, Laboratory 152,489" as Government's Exhibit next in order for purposes of identification.

(The envelope in question was marked U. S. Exhibit 2 for Identification.)

(Testimony of G. E. Mallory.)

Mr. Davis: That is all of this witness, your Honor.

Cross-Examination

By Mr. Klein:

Q. Mr. Mallory, all that you know about this matter is that on January 15th a certain package was handed to you for your analysis, is that right?

A. That is correct.

Q. And you are definitely satisfied that January 15th is the correct date?

A. That was handed to me personally on January 15th by Narcotic Agent Briscoe.

Q. Do you remember the time of the day?

A. I don't remember it, no.

Mr. Klein: That is all.

Mr. Davis: I will call Mr. McGuire. [10]

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THOMAS E. McGUIRE

called as a witness on behalf of the Government;  
sworn.

Q. (By the Clerk): State your name to the Court and jury.      A. Thomas E. McGuire.

Direct Examination

By Mr. Davis:

Q. Mr. McGuire, what is your occupation, please?      A. Federal Narcotics Agent.

Q. How long have you been engaged in that occupation?      A. Approximately 20 years.

Q. Directing your particular attention to the month of January, 1946, were you familiar with

(Testimony of Thomas E. McGuire.)

certain premises in San Francisco known as the Star Dust Bar?      A. Yes, sir, I was.

Q. Where was that place located?

A. It was located in the northeast corner of Larkin and Sutter Street, in San Francisco.

Q. As preliminary to the date in question, is it or is it not a fact that you and other agents had an observation post in that building from which you could observe the basement storeroom of the Star Dust Bar?      A. Yes, sir, I did.

Q. Over what period of time was that observation post maintained, would you say?

A. Well, it started on January 5th and it ran for approximately, [11] I should judge, between six and eight weeks, if not longer.

Q. Will you describe for the aid of the jury the actual physical situation there, as far as the storeroom and the observation post which you and other agents had established?

A. Yes, sir. There was quite a large cellar. The entire physical outline of the cellar was the bottom of this six story building. The cellar was cut up so that they had a room which was used for storage of baggage and trunks and the unused furniture from the furnished apartments. That room, I should judge—I have the exact figures here; at least it was measured exactly—but it ran approximately 30 feet long and approximately 20 or 30 feet wide. That was the storage room in which we were concealed. That room had a lock, a padlock, and the key was furnished by the owner of the building, and



(Testimony of Thomas E. McGuire.)

the manager of the building. That room was in one corner of the entire basement.

Immediately adjoining that room, with a very light wood partition, was a liquor room, a storeroom that pertained to the Star Dust Bar, and contained numerous bottles of an assortment of liquors and wines. That room was approximately nine feet by, I should judge, nine or ten feet in length. At least it was within about six or seven feet narrower than the storeroom we were in. It was a public hall from the bar, the rear of the Star Dust Bar leading to a public toilet that was some 50 feet across the hall from where we were concealed. [12] There were other storerooms in the basement. Some I know belonged to the Star Dust Bar, and if I am not mistaken there was a boiler room in the basement, and there was an areaway, and an airshaft well that led into the basement, but physically the baggage room in which we were concealed and the liquor storeroom were adjoining one another.

Q. From your position in the baggage room could you or could you not see into the storeroom of the Star Dust Bar which you have described?

Mr. Klein: If it please your Honor, I submit that would be a question for the jury to determine after the witness describes the rooms and the method of seeing.

Mr. Davis: That is a preliminary question of how he did so. That is what I intended to bring out next.

The Court: I will overrule the objection.

(Testimony of Thomas E. McGuire.)

The Witness: Then the partition between the liquor storeroom pertaining to the Star Dust Bar and the baggage room, in which the agents were concealed, there were four holes approximately four inches by eight inches along the wall, the wooden partition. As I said, the wooden partition between the liquor storeroom and the baggage room was of very light construction, and they had these four holes already in. There were numerous openings between the boards likewise. However, the openings were very large. I might add also that over the [13] entire wooden partition was a thin wire net, more or less like chicken coop wire, which likewise were over the holes. However, they were quite large holes in this chicken wire. Those four holes were in the wooden partition that was within the baggage room, and which we used to observe the actions in the liquor room.

On the outside of the liquor room, as I say, the partition of the baggage room was longer than the partition of the liquor room, so that there were two holes made in the partition leading into the public hall, so that while within the baggage room through the four openings in the partition observation could be had of the liquor room, and the two holes on the outside of the liquor room allowing access and viewpoint of the public hallway and the toilets on the other parts of the hall, other than what was in the liquor room.

Q. (By Mr. Davis): Incidentally, Mr. McGuire, do you have in your possession today a dia-

(Testimony of Thomas E. McGuire.)

gram of that building, the liquor room, and store-room?      A. Yes, sir, I have.

Q. May I see it?

(A diagram was handed to Mr. Davis.)

Mr. Klein: This is a rather complex diagram, your Honor. I will be through with it in just a moment.

Q. (By Mr. Davis): Did you prepare this diagram, Mr McGuire?

A. No, sir, but it was in consultation with Mr. Grady. [14]

Q. Have you examined it?

A. Yes, sir, I have.

Q. Is it a true and accurate diagram of the premises as you have described them, according to your recollection?      A. It is, Mr. Davis.

Mr. Davis: If the Court please, I would like to offer this as Government's exhibit next in order for purposes of identification, and I should like to be permitted to allow the jury to examine it so that they may have a picture of the situation when they hear the testimony.

The Court: Very well.

(The diagram in question was thereupon received in evidence and marked U. S. Exhibit 3.)

Mr. Davis: Does your Honor want me to proceed with the examination?

The Court: I think it would save a lot of time



(Testimony of Thomas E. McGuire.)

if you put it on the blackboard and described it to all the jurors at the same time.

Mr. Klein: May I be permitted, your Honor, to stand in a position so I may view it?

The Court: Yes.

Q. (By Mr. Davis): Can you see that from there, Mr. McGuire? A. Yes.

Q. This room, here, approximately——

A. Mr. Davis, his Honor cannot see it very well.

(The blackboard was moved slightly.)

Mr. Davis: Q. This room here, which is marked “Storeroom,” according to this diagram is approximately 9 feet by 23 feet, is that right?

A. That is correct.

Q. What is this?

A. That is a public hallway leading from the back passage areaway in the rear of the building. That is a public hall.

Q. And this room marked “Liquor room” approximately 9’6 by——

A. It is about the width of a door plus 4 feet, Mr. Davis—I should judge about 8 feet shorter than the baggage room.

Q. About 8 feet shorter this way than this way (indicating)? A. That is right.

Q. This was a liquor storeroom?

A. That is the liquor storeroom, yes, sir.

Q. Where were these holes that you testified to as being in this partition between the storeroom and the baggage room?

(Testimony of Thomas E. McGuire.)

A. They are marked with—I will have to step down, if your Honor please—they are marked here with these crosses, 3, 4, 5 and 6. They are not crosses, but they are numbers, 1, 2, 3, 4, 5, and 6. The approximate openings of each is marked down here. These two are outside the liquor storeroom, while these four are within. This is from the baggage room into the liquor room, through these four holes, and [16] these two holes are from the baggage room into the public hallway.

Q. This is a hallway, here?

A. That is a general hallway.

Q. What is this?

A. This is a general hallway, likewise. This is out to an air shaft, and this is out to the areaway, and this is the entrance to the Star Dust Bar (indicating).

Q. So that four of the holes from the storeroom look into the liquor room, and two of them out into the open hall, is that correct?

A. Yes, sir.

Q. Directing your particular attention to the 10th day of January, 1946, were you in the storeroom making observations into the liquor room?

A. I was.

Q. What time of the day did you first commence to make observations?

A. On that particular day I went there at four o'clock in the afternoon.

Q. Who, if anyone else, was with you in the baggage room?

(Testimony of Thomas E. McGuire.)

A. I joined Mr. Grady, Mr. Hays, and Mr. Briscoe, three narcotics agents from my office.

Q. Pardon me. I didn't hear the answer.

A. Mr. Hays, Mr. Grady, and Mr. Briscoe, three narcotics agents [17] from my office.

Q. How long did you remain in there on that evening?

A. On that particular occasion we left, I should judge, about 12:30 or 1:00 o'clock in the morning. That was the usual routine.

Q. Were you in there from four until—what time did you say, about?

A. 12 o'clock at night, 12:30, I should judge.

Q. Were you constantly in the storeroom observing what was going on in the liquor room from 4:00 until 12:30 on that day?

A. No, sir, barring the time I had dinner, which was from 6:30 to about quarter after seven was the only time that I wasn't there.

The Court: Q. Some other agent was there during that time?

A. Oh, yes, I relieved Mr. Hays for his dinner hour and he relieved me for mine.

Mr. Davis: Q. What was the first thing, if anything, in connection with this case that you observed while you were in that baggage room?

A. Well, at 7:30, upon my return from dinner, a conference was had with the agents, and the actions discussed of what had taken place during the afternoon, and at 7:30 Mr. Grady stepped out of the baggage room door and obtained a bundle of a



(Testimony of Thomas E. McGuire.)

white substance, which later was determined to be heroin.

Mr. Klein: Q. Who said that? [18]

A. Mr. Grady.

Q. Grady stepped out where?

A. Out of the baggage room to a place of concealment, which was right outside of the door leading to the liquor room.

Mr. Davis: Q. Where would that be on the diagram, Mr. McGuire?

A. This is the doorway out of the baggage room (indicating). This is the partition, this is the doorway; this is the doorway leading into the liquor room. This is what we call the beer cases, the empty beer cases. That was the place of concealment from which Mr. Grady obtained the bindle that is here as evidence. Mr. Grady stepped through this door while I held the door, obtained the bindle, and then we came right into the baggage room.

Q. In order to do that did he have to enter the liquor room?

A. Oh, no, the place of concealment is outside. This door is closed, as this door is. This is just the opening.

Q. Am I correct in assuming that there were beer cases stacked up in the hallway outside the door of the liquor room, is that correct?

A. That is correct, yes, sir.

Q. Describe, if you can, in more detail, what happened when Mr. Grady went out there.

A. Mr. Grady went out, and there were four

(Testimony of Thomas E. McGuire.)

or five empty beer cartons, large cases of beer. The empty cartons, the cardboard [19] cartons stacked immediately adjoining the door to the liquor room. Mr. Grady opened between the third and fourth, just tipped the two beer cartons apart, and obtained a small piece of white paper that was in between the two beer cartons. Incidentally, he came into the baggage room where I and the other agents were concealed. We opened that package, abstracted some of the white substance that had been in the package, refolded the paper in the original folds, and Mr. Grady then brought the package out and replaced it exactly as he found it, between the two empty liquor cases or beer cases.

Q. Were you holding the door or did you observe Mr. Grady when he went out and put the bindle back? A. Yes, sir, I did.

Q. I will show you Government's Exhibit No. 1 For Identification, and ask you if this is the package which you say you placed some of the contents in that was removed from the bindle?

A. Yes, sir, it is. My initials are on this package. This is a piece of the notebook that was used to place the white substance within.

Q. When did you place your initials on there?

A. At the time the package was folded, after the substance was placed in it.

Q. Did you personally keep possession of this package? [20]

A. No, sir, Mr. Grady did. He maintained possession of it.

(Testimony of Thomas E. McGuire.)

Q. And that was at 7:30 in the evening, is that correct?      A. Yes, sir, it was.

Q. Did you have an occasion to see the defendant on that evening?      A. Yes, sir, I did.

Q. At approximately what time?

A. Approximately 10:45 p.m. of that evening. This defendant was observed by myself and the other agent enter the liquor storeroom.

Q. Who, if anyone else, was with him, if you know?

A. Yes, Vince Bruno, a man I know as Vince Bruno.

Q. What did you observe then at that time?

A. I observed Vince Bruno go to the same place of concealment in the empty beer cartons that was outside the liquor storeroom, remove the same bindle which Mr. Grady had removed previously and restored there; I saw the defendant and Vincent Bruno enter the liquor storeroom and lock the door with the defendant, Joe Pitta, in the liquor room.

Q. In order that there may be no misunderstanding, exactly how did that take place? Did Bruno and the defendant come along the hall?

A. Together, from the entrance of the liquor store—the bar. Both of them left the bar and came into the hall.

Q. When was it that the bindle was removed by Bruno from the [21] beer cases? Before they went into the storeroom?

A. No, just as they were in the act of going in.



(Testimony of Thomas E. McGuire.)

In other words, to make myself clear, Bruno opened the storeroom and at the same time holding the door with his foot he extracted the bindle from the hiding place. Then both defendants entered, and both were in the liquor store when Bruno locked the liquor store.

Q. Where were you standing in your observation post when you observed the first part of this transaction, coming from the bar? I think if you refer to it by number we can see it.

A. There were two points, No. 1 and No. 2. No. 2 was the higher observation point; No. 1 was the low one. I was sitting at the low one so I could observe the man as he came from here. This is a little longer than what it should be, but as he comes over about here I could see him. I could observe him from here to here (indicating), and I could observe him at this beer case withdraw the bindle. Then they both went in, and I went from this spot over to one of these observation points so I could observe him there.

Q. Tell me, from observation post No. 1 over to the beer cases where the bindle was concealed, what in your opinion would be the approximate distance?

A. Not more than—judging the distance of the door to be  $3\frac{1}{2}$  feet—not more than 5 feet, 5 or 6 feet at the most.

Q. What was the condition of the lighting of the hallway at [22] the time?

A. It was all lighted.

Q. Where is the light in the hall, if you recall?

(Testimony of Thomas E. McGuire.)

A. There was one large light that was more than sufficient to light the hallway up, due to its being used so frequently for the men's room.

Q. You say that you saw him remove a bindle similar to one that had been put in there, so far as you know?

A. Yes, sir, I seen him remove the bindle.

Q. What, if anything, transpired after Bruno and the defendant went into the storeroom?

A. The defendant Bruno opened the package of heroin, the white substance, and using a penknife, which was on a small table there, he took a little bit on the edge of the end of the knife and sniffed it in both nostrils. He then passed the knife and the paper to the defendant Pitta, who likewise dipped into the same supply of white substance, placed it to his nose, and with deep inhalations withdrew the white substance into his nostrils.

Q. Did or did not the defendant and Bruno have an conversation at that time which would be pertinent to this case, here?

Mr. Klein: Just a moment. I object to the form of the question: Did the defendant and Bruno have some kind of a conversation which would be pertinent?

The Court: I will sustain that objection. Have him [23] state any conversation that he heard.

Mr. Davis: Q. Was there any conversation?

A. Yes, sir, there was conversation dealing with details—other details which I have consulted with you on. I can relate them here.

(Testimony of Thomas E. McGuire.)

Q. No, I am not going to put those in.

The Court: You mean was there any conversation concerning this heroin? Is that what you mean?

Mr. Davis: That is right. In other words, there was a conversation, your Honor, which I consider might be prejudicial and therefore I do not want to put it in.

The Court: Q. Was there any conversation on the subject of the heroin?

A. No sir, there was very little conversation at this particular instant; there was very little conversation relative to the heroin, and the use. Both of them just used it, and then I observed the defendant Pitta refold the paper in the same manner in which it was originally—in other words, the paper is quite large, and it fell easily into the folds, in the peculiar way in which it was folded, and it was returned with the penknife to Bruno. Bruno then took the same package and replaced it in the place of concealment between the beer boxes outside the liquor room.

Mr. Davis: Q. About how long were they in the liquor storeroom? [24]

A. On this particular occasion they were only there about, I should judge, three to five minutes, if that long.

Q. What occurred, if anything, after that?

A. Both of them left the liquor room and both returned to the bar.

Q. And you stayed there until approximately 12:30, if I understand your testimony?



(Testimony of Thomas E. McGuire.)

A. Yes, sir, until I was sure that all had left the liquor bar, which was sometime after 12:30, I should judge, by the time they counted up their money and left.

Q. Did this defendant or did he not reenter the liquor room from the time you describe until the time you left?

A. Not on that particular night.

Mr. Davis: I believe that is all of this witness. May I interrupt before you commence? Do you have any objection to Mr. Mallory, the chemist, being excused?

Mr. Klein: No, none at all.

Mr. Davis: May the witness Mallory be excused?

The Court: Very well.

Cross Examination

By Mr. Klein:

Q. You state your name is McGuire?

A. That is correct, sir.

Q. And you have been an agent for some fifteen or twenty years?

A. Approximately twenty years.

Q. And you state that you first went to the premises at 988 [25] Sutter Street, the Star Dust Bar, which is at the corner, there——

A. The bar is at the corner of Larkin and Sutter Street, yes, sir.

Q. Is that the correct number?

A. I didn't see the exact number of the Star

(Testimony of Thomas E. McGuire.)

Dust Bar. I am not familiar with it. It is the northeast corner of Sutter and Larkin Street.

Q. You do not know the number?

A. I am not altogether certain of the number, no sir.

Q. You state that you were in this observation room and the storage room of this apartment house from January 5th for about six or eight weeks, is that right?

A. I would judge that would be correct, yes, sir.

Q. On this date you went there at about 4:00 p.m.?

A. On January 10th?

Q. Yes.

A. Yes, sir.

Q. When you went there did you go there alone or in company with somebody?

A. On that occasion, if I am not mistaken, I believe I went alone, because of other work.

Q. So at 4:00 p.m. on January 10th you went to the storeroom of that building alone, is that correct?

A. I went in by myself, yes, sir. [26]

Q. How long were you in that storeroom alone?

A. I didn't say I was alone, Counsel. I was——

Q. You went in about 4:00 p.m.?

A. Alone, yes, but I joined Mr. Hays, Mr. Grady, and Mr. Briscoe, who had already been there.

Q. Hays, Grady and Briscoe were there already, is that right?

A. That is correct.

Q. And in that storeroom were there any seating facilities?

A. Oh, yes, we had all kinds.

Q. What?

(Testimony of Thomas E. McGuire.)

A. Well, for instance the chair I was sitting in was a luxurious living room settee.

Q. One of these Chesterfields, Mr. McGuire?

A. My best description would be it was a single—it could be a Chesterfield seat. I am not familiar with the exact name of it. It was just a single seat. It was not a sofa.

Q. Would you be good enough to tell the ladies and gentlemen of the jury whether the seating part of it was close to the floor, or how far from the floor was it, if you know?

A. I could only describe it as in the same comparable situation as what I am sitting in now. I would say this seat is 2 feet from the floor, 25 inches from the floor.

Q. Are you familiar with living room Chesterfields. Is that the kind of chair you refer to?

A. It is pretty much standard, yes. [27]

Q. Some of them, you know, are very close to the floor and some of them are built a little higher.

The Court: I always though a Chesterfield was a couch.

Mr. Klein: Yes.

The Court: He says this was a chair.

Q. (By Mr. Klein): A lounging chair.

A. It was a chair, your Honor, yes sir. That is more my term.

Q. (By The Court): No more than one person could sit in it?

A. No, just one person.



(Testimony of Thomas E. McGuire.)

Q. (By Mr. Klein): Was it an upholstered chair?

A. It had light upholstery on it. It wasn't—maybe we are at cross purposes. I can solve the purpose for you. It was not a matching set with a sofa. It was an individual chair; more or less, as I have heard it expressed, as a pullet chair.

Q. May I observe the chair you are sitting on?

A. It was more or less similar to this, except it had a little bit of upholstery on it.

Q. And you would say that the seating part of it was approximately the same distance from the floor as the chair in which you are now sitting, is that right?

A. I would say that that is so. It is a standard chair, similar to most every chair that I have sat in.

Q. When you came in there did you sit down in that one chair?

A. Part of the time. I was there two, three, or four or five hours. I was up and down a good bit.

Q. You stated before to us that you came there at four o'clock and did not leave there until 12:30?

A. Barring the time that I went to have something to eat.

Q. You went to eat at 6:30 and returned at 7:15?

A. Approximately, yes.

Q. So you were there more than four or five hours, weren't you?

A. That is correct. I have spent many hours there.

(Testimony of Thomas E. McGuire.)

Q. On this occasion you were there more than four or five hours?

A. Yes, if you judge it by the hour, I was.

Q. During the period of time that you say you came into that place, did you have access to the part outside the storage room—Mr. McGuire, did you have access or did you go into the other portion of the basement of this building from the storage room?

A. I remained—let me observe what you mean.

Q. Here is the storage room (indicating on the diagram).      A. Yes, sir.

Q. Tell the ladies and gentlemen of the jury how you got into the storage room.

A. As a matter of fact, these windows in the back we used to gain entrance into it, only because this leads from an areaway, and by not using this door we avoided detection in going in.

Q. I did not ask you that. Just tell us how you got in there. You got in through the window?

A. Through the window on this particular occasion.

Q. Did you ever come into this portion of the basement, having [29] reference to the place in front of the liquor store room, and the other part of the basement leading from the bar? Were you ever in there?

A. I was to this door, only. I was never actually in the Star Dust Bar, but I was from this door completely throughout the basement, but not on that date.

(Testimony of Thomas E. McGuire.)

Q. Did you ever measure that store room? Did you measure that with a tape?

A. I did not, no, sir.

Q. That is purely an approximation, is that right?

A. That is what I qualified it with.

Q. So that if the actual measurements would develop the fact that they were somewhat different, the actual measurements would control, inasmuch as you did not make any actual measurement, yourself, is that right?

A. No, sir, it is approximate.

Q. Were you ever in the liquor room to measure that? A. No, sir, I was not.

Q. So that as far as you are concerned, your idea of what the liquor room is and the measurements of it is based entirely upon what you saw through the peepholes and your approximation of measurements, is that right?

A. That is correct.

Q. Having in mind, and permit me to call your attention to your peephole No. 1—may I get my magnifying glass? I am [30] getting to that stage of life when my eyes are going back on me. I need additional glasses. Will you be good enough to give me your attention here? When you were sitting at the hole No. 1—— A. Yes, sir.

Q. And that is the one that had a view of the portion of the basement outside of the liquor room—that is right, isn't it? A. Yes, sir.

Q. Peephole No. 1 was how far from the floor?



(Testimony of Thomas E. McGuire.)

A. I never did measure it, but you can see it quite comfortably from where I was sitting. We arranged for that purpose. I would judge it was about 30 inches.

Q. Won't you be good enough to answer my questions without comment? If you did not measure it, say so. You say it was about 30 inches from the floor, peephole No. 1?

A. I would estimate it.

Q. What would you estimate the dimensions of peephole No. 1?

A. I would judge it was—it would be hard to say. It was a ragged hole. I would judge it was at least an inch and a half or two and a half inches.

Q. You say it was a ragged hole. Do you mean by that it was irregular in formation?

A. That is right.

Q. It was not square and it was not round?

A. That is right. [31]

Q. Just some plaster taken out irregularly?

A. That is right.

Q. When you were at peephole No. 1 were you sitting in the chair you have described to us?

A. Well, I have sat there and observed through that peephole. Whether I was in that particular incident, I won't swear to that fact. But I did observe through that peephole. Whether I was actually sitting, I won't say.

Q. When you were at peephole No. 1 on this particular night making this observation, at the

(Testimony of Thomas E. McGuire.)

time you saw Mr. Pitta come into that basement, where were the other agents?

A. I can't answer for all of them. If my recollection serves me, I believe Agent Hays was at No. 2 peephole, but I won't bind him to that.

Q. You did not make any memorandum of that?

A. No, sir, I did not.

Q. This is purely from memory?

A. No, sir, it was within a foot of one another.

Q. I mean, you are talking purely from memory?

A. That is correct, yes.

Q. And peephole No. 2 is how far from the floor?

A. I would say peephole No. 2 was—you could see it quite comfortably from standing, and I would say it was about 5 foot 5, 5 foot 3.

Q. What were the dimensions of peephole No. 2?

A. Well, that was likewise like peephole No. 1. It was a ragged hole, I would say from 2 to 3 to 4 inches. It could be any of that dimensions.

Q. What agent did you say was at peephole No. 2?

A. If I recall correctly, I would say it was Agent Hays. Now, I could be mistaken on that.

Q. In your observations you made no memorandum as to what agent saw what?

A. No, I am testifying for what I saw.

Q. Were you the chief in charge there?

A. No, sir, I was not. We were all narcotic agents working together under the district supervisor's directions.

(Testimony of Thomas E. McGuire.)

Q. Wasn't there someone of you three or four men in charge of the operations at that place?

A. No, sir; on the contrary, there was no one in charge. We were all narcotic agents working together.

Q. Didn't you make any written memorandum?

Mr. Davis: I object, your Honor. The question has been asked and answered five times now about written memoranda.

Mr. Klein: This is the first time, if it please the Court.

The Court: He said he spoke from memory.

Q. (By Mr. Klein): You came here on January 10th at 4:00 p.m., is that right?

A. Yes, sir—came where? You mean in the baggage room?

Q. Yes. [33]

A. Yes, sir, I was in the baggage room.

Q. It was, you say about 10:30 that you saw two men come in from the bar into this room, is that right?

A. That is right.

Q. When I say "this room," I mean the part outside the liquor room and outside the store room, this part here (indicating)?

A. That is correct.

Q. Who came in first, do you recall?

A. No, I couldn't. I won't swear to who came through first.

Q. But when they did come, you did see Mr. Bruno take out the key to the liquor room, is that right?

A. That is correct.



(Testimony of Thomas E. McGuire.)

Q. You likewise saw Mr. Bruno take out something from the beer cases that were piled up along the hall, here. Let us see if we can get their location. Right here we have the beer cases, right?

A. That is correct.

Q. Were these beer cases immediately adjacent to the door of the liquor room?

A. That is correct.

Q. And were these beer cases piled from the floor clear to the ceiling?

A. I won't say to the ceiling. They were piled 4 to 6 cases in height.

Q. Weren't they piled to a height taller than the average man? [34]

A. They were not over my head, if I recall correctly, Counsel. I would say they were four to six cases, allowing 12 to 14 inches a case.

Q. Wasn't there more than one stack of the beer cases there, or was there just one stack?

A. At the door I believe there was just one stack of cases, but they were adjoining others.

Q. Right there, Mr. McGuire, isn't a fact that the width of those cases was at least two or three cases in width? Isn't that right?

A. In other words, there were about three or four stacks of them.

Q. Yes, immediately adjacent to each other?

A. That is right.

Q. You say that Bruno put his hand at some place as he came in?

A. While he had opened the door, he opened up

(Testimony of Thomas E. McGuire.)

the space between two of the beer cases and withdrew the bindle that I have mentioned.

Q. Mr. McGuire, you refer to a bindle.

A. Yes, sir.

Q. Mr. McGuire, will you be good enough, so that we may have an idea, to tear that to about the size and shape of a bindle (handing a piece of paper to the witness).

A. It is usually straighter (demonstrating). The manner in which we folded our bindle was approximately in this manner. [35]

Q. I did not get that. Just what did you do?

A. The manner in which we folded our bindle——

Q. I am not asking that. I am asking about this particular bindle that you saw this man take from those beer cases. That is what I am interested in.

A. As I said, it had this long peculiar fold, and I will make an effort to fold it in that manner. This should be torn off straighter.

Q. If that paper is too large, please reduce it to about the size you think it was.

A. I am making an effort to fold it exactly the way—now, this is not as well folded as it could be or would be ordinarily. This is supposed to fit. That is rather crudely done, but that is the method in which it is folded.

Q. That is the type of—— A. A bindle.

Q. Of a paper that you call a bindle; that is commonly referred to as a bindle of heroin?

A. Yes, sir, that is how it is folded.

Q. Are you the one that went to this bindle

(Testimony of Thomas E. McGuire.)

sometime that afternoon and took out some substance?

A. No, sir, Mr. Grady took it out on that particular date.

Q. In your presence? A. Yes, sir.

Q. At that particular time? [36]

A. At 7:30 that night, yes, sir.

Q. That was about three hours before these two gentlemen came from the bar, is that right?

A. Yes, sir.

Q. You say it contained about one gram?

A. I didn't say how much it contained. You mean how much was in the bundle when Mr. Gray obtained it?

Q. Yes.

A. I would say it was approximately a dram of heroin at that time.

Q. How much would you say a dram was, so we can get that idea clearly?

A. A dram was sold.

Q. I am not asking you what was sold, now; I am asking you in quantity. A. In quantity?

Q. Yes.

A. Eight of them would be an ounce.

Q. Eight drams would be one ounce?

A. Yes.

Q. So that the amount of material—let us refer to it that way—would be just a few scatterings of something like flour, would it not?

A. Well, it is like flour, but the few scatterings, it would still be a dram, counsel, 50 grains or approximately 60 grains, [37] as you choose to call it.



(Testimony of Thomas E. McGuire.)

Maybe a few scatterings, but per se, in itself, it would be quite a lot.

Q. Yes, you say 8 of these——

A. Would make a full ounce.

Q. And as this man came from the bar you say he put his hand in between the beer barrels and took out this paper that you had had under observation? A. The beer cases, yes, sir.

Q. Did you have this under observation from 4:30 until 10:30?

A. No, sir, I did not. I couldn't see it when it was in its place of concealment, Counsel.

Q. Did you have the place of concealment under observation continuously?

A. Looking out through the openings, I did observe that place as readily as I did the rest of the hall. I couldn't say I observed that one particular spot, but I do know this, Counsel, that that was not disturbed only on the occasions in which I seen it disturbed.

Q. You were at dinner from 6:30 to 7:15?

A. That is the only time. I couldn't answer that during that time.

Q. You can't answer for what happened——

A. No, sir.

Q. Won't you permit me to ask my questions? I do not want to disturb you, either, in your answers. So that from 6:30 to [38] 7:15 you do not know what, if anything, happened to that so-called bindle?

A. No, sir, I have no knowledge of it.

(Testimony of Thomas E. McGuire.)

Q. When this man Bruno came in and took that bindle and opened the door, Mr. Pitta did not have the keys to the door, did he?

A. I couldn't answer for that, Counsel.

Q. Didn't you tell the ladies and gentlemen of the jury that it was Bruno who opened the door?

A. That is correct, I said that, but I do not know whether Pitta had a key for that door, or not.

Q. Let us put it that way: He did not insert any key in that liquor room to open that door?

A. The defendant did not, no, sir.

Q. And Mr. Pitta did not put his hand in the vicinity of the place of concealment of that bindle?

A. No, sir, I did not see him do that on any occasion.

Q. You were looking there at that time, weren't you?

A. Yes, sir, I was.

Q. So that he did not put his hand there and had nothing to do with the opening of the door. They went into the liquor room, is that right?

A. That is correct.

Q. They stayed there, according to your statement, about three or four minutes?

A. I would say not much more than five minutes.

Q. You have described the size of the liquor room. Can you give us any additional description of that room?

A. In what manner, Counselor? There was a shelf around it and liquor stacked around it.

Q. Let's see. Here is where your peepholes are, peepholes 1 and 2, and then you have 3, 4 and 5.

(Testimony of Thomas E. McGuire.)

They appear very close together there, don't they?

A. On that drawing they do, yes, sir.

Q. As a matter of fact, they are about one shelf apart. There is shelving alongside this wall, isn't there?

A. Yes, sir.

Q. Isn't it a fact that the shelves are about 33 inches deep?

A. I do not know. I never did measure them, but I will accept your word.

Q. You never, from your peephole when you were there—nobody who was there inserted a ruler through there so you could get the measurement of the width of that shelf, is that right?

A. I did not do that, counsel.

Q. Isn't it true that these shelves ran clear up along this wall with divisions right along—in other words, there was shelving clear from the floor right up, isn't that right?

A. Not that you could notice from the baggage room, counselor. I will accept your word that they were there. They might be. I don't know. You couldn't see them from the baggage room. [40]

Q. Did you see anything on those shelves as you looked through these peepholes?

A. Oh, yes.

Q. What did you see?

A. Whiskies, wines and liquors.

Q. Were there any bottles in the shelves at the exact location of these peepholes?

A. Well, counselor, I will try to explain it in this respect, that the holes were four to eight inches;



(Testimony of Thomas E. McGuire.)

the size looking into the liquor room I would judge these holes were from  $3\frac{1}{2}$  to 4—three and a half by 8 inches.

Q. You think that is a fair measurement,  $3\frac{1}{2}$  by 8?

A. I will accept it. In my best recollection and knowledge I believe that is the approximate size. We specifically mentioned that while we were in there observing it, and I do know this: I put four fingers on top of one another in several of them, and I was able to do it.

Q. If I were to tell you that they were about three and a half inches square, that I measured them, would that refresh your recollection?

A. I would rather trust to my own recollection on it, Counsel, because we talked about it a good bit at the time.

Q. We will give you a chance to measure it. I think we will go up there together.

A. Thank you. [41]

Q. Let me ask you this: Isn't it a fact that these shelves along the wall where these people were, were all filled with bottles of liquor, the ordinary size of a quart whiskey bottle?

A. I will not say that, Counsel.

Q. May I show you a photograph of what I have described as peephole No. 1 and ask you whether it is not true that the peephole is located clear to the top of this shelving? Isn't that a fact? Does that described that peephole?

A. I can't answer for that, counselor, and I

(Testimony of Thomas E. McGuire.)

won't bind myself to any answer in that respect, because now you are asking me to describe the peephole from this side, whereas I have been looking at it from that side. Now, what is on the other side of the peephole I can't tell you. I do know that my view was not obstructed by any bottles at most positions that I was in there.

Q. Mr. McQuire, will you be good enough just to answer my questions, and I will ask that the last part of the answer be stricken, if it please your Honor. We will develop that fact and let the jury determine whether or not his vision could or could not be good.

The Court: I do not think the answer should go out. He explained to you why he could not describe the peephole on this side, because he did not look from that side. That is what the witness said. [42]

Q. (By Mr. Klein): Let me ask you this: In looking at this peephole——

A. I won't answer that that is the peephole, counsel.

Q. Pardon me. You won't answer whether this is a peephole? A. I can't say that it is.

Q. You do not know that that is a peephole?

A. I can't say that it was, Counsel.

Mr. Davis: I object to this, your Honor.

Mr. Klein: I ask that this photograph be marked for identification as Defendant's Exhibit A, if it please the Court.

(The photograph displayed to the witness

(Testimony of Thomas E. McGuire.)

was thereupon marked Defendant's Exhibit A for Identification.)

Mr. Klein: Let me show you another portion of that same wall, Mr. McGuire, purporting to be a photo of a merchandise shelf, showing peepholes in that place. Does that mean anything to you in the shape of that?

A. No, counsel, I cannot truthfully answer that. That has no bearing whatsoever from the wall I was looking at—in fact, it could be. I will not dispute your word on it, but I would like to see it.

Mr. Klein: I will ask that this be marked for identification as Defendant's Exhibit B.

(The photograph in question was thereupon marked Defendant's Exhibit B for Identification.) [43]

Q. (By Mr. Klein): May I show you likewise another photograph, showing the floor and the ceiling and all of the peepholes there, and ask you whether that means anything to you.

A. I cannot see any peepholes in this—just a moment. Pardon me, counsel. Maybe it is my fault. I see no peephole in that picture, counsel.

Mr. Klein: I ask that this be marked for identification as defendant's next in order.

(The photograph in question was thereupon marked Defendant's Exhibit C for Identification.)

Q. (By Mr. Kline): Do you recognize this photograph as being a photograph showing the



(Testimony of Thomas E. McGuire.)

entrance to the liquor storeroom through this door, and this pile of cases there? Is that about the way it looked to you?

A. Yes, sir, that is apparently the entrance from the liquor store and the entrance to the storeroom, the bar and the storeroom.

Q. And it shows the pile of beer cases there, is that right?

A. Now, for your benefit, counselor, there are two different types of beer case. This is the beer case I have reference to. These are the small bottles, the midget size. These are the larger size. I said it was between the third and fourth cases.

Q. But there were several stacks of beer cases along the wall [44] adjacent to this door?

A. But no small ones. If my memory serves me correctly, there were no small ones at that time. I think it was only these large ones.

Q. Large beer cases?                      A. Yes.

Mr. Klein: I ask that this be marked for identification as Defendant's Exhibit next in order.

(The photograph in question was thereupon marked Defendant's Exhibit D for Identification.)

Q. (By Mr. Klein): Mr. McGuire, when you look through these peepholes on the portion of the wall adjacent to the liquor room, you have told us that there was shelving there; that you know, is that right?

A. There was shelving. I could see the bottles.

(Testimony of Thomas E. McGuire.)

Q. And isn't it true that those shelves were all filled with liquor bottles?

A. Well, relatively speaking. There were liquor bottles there, but I will not qualify it and say it was filled. There were liquor bottles there. I could observe them, and we could tell you they were there, and I could see bottles, but they were not all filled, if that is what you mean, counsel.

Q. Isn't it a fact that as you looked through this peephole, with the shelving 33 inches wide, and the location of the peepholes as they were, isn't it true that your vision coming out [45] was obstructed by the 33 inches of shelving?

A. It is hard to describe, other than to say that there might have been a neck of a whisky bottle somewhat similar to that lamp on that desk, which I could plainly see. However, it did not obstruct my view from seeing them, which was over it. That is the only way I can explain it.

Q. I am asking you this, Mr. McGuire: Looking through that peephole with the 33-inch deep shelf there, and the location of that peephole the way it was, isn't it true that your vision looking straight across the room was confined only to a certain portion of that liquor room?

A. It was not, counselor. I will swear that I could see above the tops of the whisky bottles unobstructed across the room of that liquor room, if that will help the question.

Q. Could you see the faces of the men in that

(Testimony of Thomas E. McGuire.)

room if they were standing there, through the peephole?

A. At certain peepholes I could see from their waist up, and I could see from their pants' pockets up.

Q. Up how high?

A. I could see to their faces.

Q. Did you see their faces?

A. Oh, yes, on numerous occasions. I not only seen their faces when I was standing, I likewise saw their faces while they were sitting. They were sitting on the beer cases and liquor cases that were in there. [46]

Q. Mr. McGuire, will you be good enough to confine yourself to my questions? I am asking you about the evening of January 10th, when these two men came in there about 10:30 that night; did you see the faces of these two men?

A. Yes, sir, I can swear that I saw the defendant's face, enough of it that I could know him. I knew him previously. I can swear to that. I mean I saw the man known to me as Vince Bruno.

Q. At that particular time?

A. At 10:45 on the evening of January 10th.

Mr. Klein: If it please your Honor, before we get through with this matter I am going to ask your Honor, the jury and the witness, to come out and view the condition that exists there, so we can definitely state it is just as it existed on January 10th, so the jury may determine that very fact.

The Court: I will determine that later. I do not



(Testimony of Thomas E. McGuire.)

take juries to see places where events took place unless it is absolutely essential, because too much error can result from that. It is very rare. It may be that it might be necessary, but let us hear the evidence first.

Q. (By Mr. Klein): Mr. McGuire, you say that Mr. Pitta and this *may* stayed in there a very few minutes and had no conversation, is that right?

A. Yes, sir, they did have a conversation.

Q. They talked very little? [47]

A. They had conversation.

Q. And you saw Mr. Bruno open the bindle and take some on a knife, and what did he do with it, did you say?

A. He took it on the blade of a knife and placed it to his nostrils, and took deep inhalations of the white substance until it disappeared from the blade of the knife into his nostrils.

Q. Both nostrils? A. Both nostrils.

Q. Then what happened?

A. He passed the paper and the knife to the defendant Pitta and he likewise did the same motions. He took a little bit of the white substance on the blade of the knife, placed it to his nostrils, took a deep inhalation, and the white substance disappeared in his nostrils, in both nostrils. He did it repeatedly.

Q. And the only time you saw the defendant Pitta have actual possession of that so-called bindle was at this particular time when Bruno handed it to him and he took the small particle on the edge

(Testimony of Thomas E. McGuire.)

of the blade and then gave it back to him after sniffing, is that right?

A. He took it on the blade of the knife. It was not a small particle, per se; it was, I should judge, from my experience with it, a quarter of a grain or a half a grain of substance.

Q. Let us get some idea of what you call a quarter of a [48] grain. Would you step up to the blackboard here with a pencil and draw what you think is a quarter of a grain?

A. Of heroin?

Mr. Davis: If the Court please, I am going to object to that.

The Court: I do not think anybody can draw a grain.

Mr. Klein: We want to have some idea. He said manifestly it is a large amount.

Mr. Davis: Give him something similar to it and let him portion it out.

The Court: You can't draw a grain on the blackboard.

Mr. Klein: I just want the jury to get some idea of what it is.

The Court: Ask him.

Q. (By Mr. Klein): What is a quarter of a grain, Mr. McGuire?

A. I have explained it in court in this manner, that it was approximately the ash that is left on a cigarette after it has burned for a few minutes, that is, around the circumference, around the ash, on the edge of a cigarette after it has burned.

(Testimony of Thomas E. McGuire.)

Q. Burned for how long?

A. I should judge a quarter of an inch or three-eighths of an inch.

Q. That is what you call a quarter grain?

A. That in heroin could be weighed to approximately a quarter of a grain or half a grain. [49]

Q. Pitta handed it back to the other man? He handed the bindle back, is that right?

A. He repacked the bindle in the manner he had it formerly.

Q. And they left the room together?

A. That is right.

Q. And Bruno locked the door?

A. That is correct.

Q. And Bruno placed the bindle in the place where you had *served* it before, is that right?

A. That is correct.

Q. And Pitta went away?

A. Both re-entered the bar.

Q. Pardon?

A. Both re-entered the bar.

Q. You do not know how long Pitta stayed there?

Mr. Davis: I object to that, your Honor. He said he entered the bar.

Mr. Klein: He stated before he did not leave until 12:30 and made sure everybody left.

Q. You did not know Pitta was in the bar—let me put it that way.

A. I would have to recount what I overheard there.

Q. Let me ask you this: You do not know from



(Testimony of Thomas E. McGuire.)

your own personal knowledge that Pitta was in that bar?

A. I couldn't swear to that fact, no, counsel. [50]

Q. Let me ask you this: When Mr. Pitta and Mr. Bruno were in that room, isn't it a fact that Mr. Bruno gave Mr. Pitta about a dozen bottles of Scotch whisky?

A. Mr. Pitta received—No, sir.

Q. Yes?

A. No, there was no whisky given whatever.

Q. You definitely know that?

A. I am swearing to that fact.

Q. You are swearing to all the facts you testify to, aren't you? A. Yes, sir, I am.

Q. Mr. McGuire, there are no chairs in that liquor storeroom, are there?

A. I do not recall seeing any.

Q. You had it under oservation for eight weeks?

A. I didn't see any.

Q. These two men were standing on their feet during those three or four minutes they were in that place?

A. No, sir, if I remember correctly the defendant was standing on a beer—or a little box or case.

Q. What?

A. He was sitting on something. He was down lower than he would be if he were standing. I seen him standing and I seen him sitting.

Q. When did you recall that?

A. I don't think I ever said different. [51]

(Testimony of Thomas E. McGuire.)

Q. You did not tell that to Mr. Davis on direct examination, did you?

Mr. Davis: I object to that question, your Honor. Perhaps the question was not asked.

Mr. Klein: I will withdraw it.

Q. What causes you to remember now that he was sitting?

The Court: You just asked him that, if I remember right.

Mr. Klein: Yes, I asked him what caused him to remember that, if it please the Court.

Mr. Davis: You asked him; that is why.

The Court: Go ahead.

A. You asked me about the chairs, and I do know that on numerous occasions they sat on the whisky boxes and I have said in my memory they sat on the whisky box on this particular instance.

Q. (By Mr. Klein): You remember that. The point I am asking, Mr. McGuire, what recalls that definitely to your mind, that on this particular occasion there was a whisky box there for him to sit on?

A. Well, you mentioned the fact of whether the chairs were there, and then I said there were whisky boxes which they did use, and then that brought out the fact that he was sitting on the whisky box.

Q. When you say "whisky box," do you mean one of these small cases containing 12 bottles of whisky? [52]

A. That is correct.

Q. And he was sitting low on one of those cases?

A. He was sitting on one, counsel.

(Testimony of Thomas E. McGuire.)

Q. Do you know whether there was one, two, or three in that batch he was sitting on?

A. I couldn't answer how many he was sitting on, but he appeared to be sitting on one. There might be two there, I am not sure.

Q. Was it a case containing whisky or was it one of these cardboard boxes?

A. I couldn't answer that, counselor. It appears to me to be a whisky box, because they had whisky cases in there, and I seen them open whisky cases, and I presumed it was whisky cases.

Q. And that is why you presumed, because you had seen them in there, is that right?

A. Oh, yes, and I seen them opening them, and I seen them withdrawing whisky from them.

Q. And you say they were large wooden cases?

A. They were the standard size cases that I had seen whisky bottles, quart bottles in.

Q. Mr. McGuire, neither the ladies and gentlemen nor I know what you mean by standard size. Will you please explain that?

The Court: I am not so sure that we are so completely ignorant on that subject.

Mr. Klein: Well, your Honor, my idea on that is that [53] from time to time I have been in a wholesale house and they are nothing but cardboard containers. They are not wooden cases.

The Court: I think you are mistaken about that, Mr. Klein, but you ask the witness.

Q. (By Mr. Klein): Did you see wooden cases in there?



(Testimony of Thomas E. McGuire.)

A. Yes, sir, I seen them opening the wooden cases, and the beer cases there were wooden cases.

Mr. Klein: That is all.

Mr. Davis: That is all.

The Court: We will take the afternoon recess at this time, ladies and gentlemen of the jury. I will ask you to bear in mind the admonition that I have already given you, that you cannot talk among yourselves or with anybody else about this case, or form or express any opinion until the case is finally submitted to you.

(Recess.)

The Court: The jurors are all present. You may proceed.

Mr. Davis: Call Mr. Grady.

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### WILLIAM H. GRADY

called as a witness on behalf of the Government;  
sworn.

The Clerk: State your name to the court and jury.

A. William H. Grady. [54]

### Direct Examination

By Mr. Davis:

Q. Mr. Grady, what is your occupation, please?

A. I am an agent of the Federal Bureau of Narcotics.

(Testimony of William H. Grady.)

Q. How long have you been engaged in that occupation?      A. Approximately five years.

Q. Directing your particular attention to the methods——

Mr. Klein: Pardon me, Mr. Davis. Was this man sitting in the room?

Mr. Davis: He is the agent-in-charge, and who, with the court's permission, remained, as is our custom.

Mr. Klein: The agent in charge of this investigation?

Mr. Davis: Yes, the agent who assists me in the presentation of the case. He is one witness, if you will recall, whom I asked the court to permit to remain, and the court so permitted.

Q. Mr. Grady, directing your particular attention to the months of January and February, 1946, were you familiar with the premises known as the Star Dust Bar?      A. I was.

Q. Were you present there on various occasions in a storeroom from which you could observe the liquor room and also the hallway of the premises?

A. Yes, sir.

Q. Directing your particular attention to the 10th day of January, 1946, were you there upon that day? [55]      A. Yes, sir.

Q. Directing your particular attention further to 7:30 on that evening, were you present there then?      A. Yes, sir.

Q. What, if anything, did you do at 7:30?

A. At that time I left the storeroom and entered

(Testimony of William H. Grady.)

the hallway and removed a bindle or a package from between the third and fourth beer cases in a stack of beer cases in an outside hallway, alongside the door of the liquor room.

Q. What, if anything, did you do with that bindle?

A. I returned to the storeroom with that package and in the presence of Agents Hays and McGuire and Briscoe I took a sample from that package, or took a portion of the package and then refolded the package and returned it to the place that I had originally found it.

Q. I show you Government's Exhibit No. 1 for purposes of identification, and ask you if this is the package in which you put the sample which you removed from the bindle which you testified you took from between the beer cases?

A. Yes, sir.

Q. Did you place your initials on there at that time?

A. Yes, sir.

Q. Do you observe them on here now?

A. Yes, sir.

Q. What did you do with this package after you had taken the sample from the bindle and put it in here? [56]

A. I gave this package to Agent Briscoe.

Q. When did you give it to him?

A. On the 15th.

Q. Was it in your possession from the 10th, when you took it, until the 15th?

A. Yes, sir.



(Testimony of William H. Grady.)

Q. Directing your further attention to 10:30 on that evening, were you there at that time?

A. Yes, sir.

Q. What, if anything, did you observe at that time?

A. At that time I saw the defendant Pitta and Vincent Bruno come to the storeroom. I saw Vincent Bruno remove a package—the package of heroin from which this package was taken—from between the fourth and fifth beer cases. I saw Bruno and Pitta use the narcotics, use the heroin that was in the package, using a small pocket knife. They used it in such a manner—Bruno first opened the bindle, placed a small quantity of heroin on the end of a knife, and then drew the powder up into his nostrils. It was a powder, white, with a slight brownish cast. I then saw him hand the knife and the package to the defendant, Joe Pitta, and I saw him use it in a like manner.

Q. At which peephole were you standing when you could see into the storeroom?

A. I was at the peepholes looking into the liquor room. That [57] is the peepholes referred to as 3, 4, 5, and 6, on the map, the last four.

Q. How long would you estimate that the defendant and Bruno remained in there?

A. It is sometimes difficult to judge time, but my recollection of it at this time is from five to ten minutes.

Q. Did you look through one peephole at that time, or did you look through more than one?

(Testimony of William H. Grady.)

A. No, I looked through more than one.

Q. Was the defendant Pitta standing or sitting at the time that this transaction took place?

A. It is my recollection that Pitta was sitting and Bruno was standing.

Mr. Davis: I believe that is all.

### Cross-Examination

By Mr. Klein:

Q. Mr. Pitta, you say you have been with the Department about five years?

A. Yes, sir.

Mr. Davis: Pardon me. This is Mr. Grady.

Mr. Klein: Mr. Grady. Pardon me.

Q. You started on this investigation about January 5th?

A. Yes, sir. Well, on this particular investigation in the Star Dust, these people had been——

Q. Won't you please answer my question? Did you start on this investigation about January 5th? If that is not so—— [58]

A. Well, define "investigation," counsel.

Q. Pardon me?

A. Could you define the investigation you are referring to? You say "this investigation."

Q. You investigated the Star Dust premises—I will withdraw that. When were you assigned to observe the Star Dust premises?

A. That was on January 5th.

Q. How long were you on that assignment?

A. Until approximately March 1st or March 2nd.

(Testimony of William H. Grady.)

Q. Who was assigned to that duty with you?

A. There were numerous agents. I believe there were probably ten agents that worked on this investigation.

Q. Did you make any written memoranda of your observations?

A. They were contemporaneous memoranda made at the office the next day.

Q. How do you recall what happened on January 10th?

A. Well, naturally, I refreshed my memory from the notes in our office.

Q. From the notes that you made, is that right?

A. Yes.

Q. Do you recall what time of day you went to the premises?

A. My recollection and my notes indicate that I went there at two o'clock that day.

Q. Two o'clock in the afternoon? [59]

A. Yes, sir.

Q. Was there any other agent in the premises at that time?

A. I believe Agent Briscoe was there with me.

Q. You and Agent Briscoe were there from about two o'clock on, is that right?

A. Yes, sir.

Q. About what time is it that you state you took this sample from this so-called bindle?

A. At 7:30 p.m.

Q. Did you have that likewise in your memorandum?

A. Yes, sir.



(Testimony of William H. Grady.)

Q. You are now giving us your recollection after having read your memorandum and refreshed your recollection, is that right?

A. I am testifying from my memory with the recollection I could obtain in relation to instances that happened.

Q. You were not there when that bindle was placed in that particular place, were you?

A. Do you mean when the bindle was put under the beer cases?

Q. Yes, the first time.

A. Do you refer now to the 5th of January as they were changing bindles?

Q. I am asking you when this particular bindle, this one I am referring to now, was put in that particular place?      A. I don't believe so.

Q. You do not know that? [60]      A. No.

Q. On this 10th day of January, about 7:30, you went there and you saw some bindle, you brought it back into the storeroom of that building, and took a sample, is that right?      A. That is correct.

Q. And you gave that sample to Agent Briscoe?

A. Yes, sir.

Q. What did he do with it?

A. He delivered it to the chemist.

Q. Were you with him and the chemist?

A. No, sir.

Q. At that particular time you gave it to Briscoe, is that right?      A. Yes, sir.

Q. That was on January 10th?

A. January 15th.

(Testimony of William H. Grady.)

Q. Did you give it to him on January 15th?

A. Yes, sir.

Q. Did you take that sample on January 15th?

A. No, sir, I took the sample on January 10th.

Q. When did you deliver it to Briscoe?

A. On the 15th.

The Court: He said on the 15th.

Mr. Klein: I misunderstood him, if the Court please.

Q. From the 10th to the 15th, where was it?

A. It was in my custody. [61]

Q. When you say in your custody, where was it?

A. Well, part of the time it was in my billfold.

Q. And the other part of the time?

A. The other part of the time it was in my desk in the district office at San Francisco.

Q. And that desk——

A. It is a private desk that there is no entrance to by anybody except myself.

Q. Why do you say that?

A. For the reason that I am the only one who has the keys to it.

Q. And no other keys to that desk?

A. Not that I know of.

Q. You gave it to Briscoe on the 15th?

A. Yes, sir.

Q. But you did not go with him to the chemist, is that right? A. No, sir.

Q. Is that right? A. That is right.

Q. About 10:30 you saw these two men come

(Testimony of William H. Grady.)

from the bar into the hallway there adjacent to the bar, is that right?      A. Yes, sir.

Q. At what peephole were you standing at that time?

A. I was on the inside. I didn't see them until they entered.

Q. Then you did not see them enter at all, is that right?

A. I didn't see them in the hall, counsel. I saw them as the door opened. [62]

Q. What door?

A. The door to the liquor room.

Q. Isn't that hall and the door to the liquor room just one part of the room?      A. Yes.

Q. What peepholes were you at when you observed them at that location?

A. To the best of my recollection it was peephole 4 or 5. It was in the inside, in the liquor room.

Q. Mr. Grady, isn't it a fact that the only peepholes that anyone could observe a person entering the hall from the bar was either peephole 1 or 2?

A. Yes, sir, that is correct.

Q. What peephole were you at, did you say?

A. Either 4 or 5.

Q. So that when they came in from the bar you did not see them enter that hallway?

A. I saw them enter the liquor room, counsel.

Q. I did not ask you that. Please answer my question.

Mr. Davis: I object to the question. The ques-



(Testimony of William H. Grady.)

tion has been answered four times: "I did not see him in the hall."

Mr. Klein: I beg your Honor's pardon. I am sorry, Mr. Davis.

Q. So you did not see Bruno or anybody take any bindle from the beer cases? [63]

A. Yes, sir, I did.

Q. You did see them? A. Yes, sir.

Q. Isn't it a fact that the door to the liquor room was locked?

A. Yes, sir. It was locked until Bruno opened it or somebody opened it. I do not know whether Bruno opened it, because I didn't see him.

Q. Then what happened?

A. As the door opened, Bruno stooped down and took the bindle out from between the third and fourth beer case from the bottom. Then he walked in and Pitta was right behind him.

Q. You are telling the ladies and gentlemen of the jury that at that time you were at peephole 4 or 5, is that right?

A. Yes, sir, that is correct.

Q. How long had you been on that assignment at that time, Mr. Grady?

A. What assignment do you refer to, Counsel?

Q. The assignment you tell us you were assigned to on January 5th.

A. Oh, you mean the particular investigation of the Star Dust Bar?

Q. Yes. A. Since the 5th.

(Testimony of William H. Grady.)

Q. You have been on it continuously?

A. Yes. [64]

Q. During any of the times that you looked through peepholes 3, 4, 5 and 6 did you observe any shelves on the other side of the peephole?

A. Yes, sir.

Q. Did you ever measure the width of those shelves?           A. No, sir.

Q. You do not know how wide they are?

A. No, sir.

Q. If I was to tell you that those shelves are about 33 inches wide, would that be a proper——

A. I estimated them at two feet, but if you say they are 33 inches wide, I would not dispute your word.

Q. I measured them today, Mr. Grady. Did you observe in looking through this peephole these divisions for the shelves?

A. What divisions do you refer to?

Q. There is shelving there with vertical boards and cross shelving, isn't that right?

A. Oh, you mean boards in between the shelves?

Q. And the horizontal boards.

A. Yes, there are horizontal boards.

Q. There is a regular shelf there upon which a stock of whisky is carried, isn't that right?

A. Yes, sir.

Q. And these particular peepholes that you have referred to as peepholes 3, 4, 5, and 6, isn't that true, that they are [65] just about on a level and

(Testimony of William H. Grady.)

just below the shelving as it is laid about 36 inches from the floor?

A. I can't say exactly to that. I can say that I could see what was going on in the room.

Q. We will determine that, Mr. Grady. Isn't it a fact that the peephole was just below a cross section of the shelf?

A. No, sir, that is not my recollection of it.

Q. May I show you what has been marked here as Defendant's C for Identification, which is a photograph of shelving, and I call your attention to this portion of the peephole there right above the top of this bottle? Do you recognize that as one of your peepholes?

A. No, I do not.

Q. You do not? A. No, sir.

Q. In looking through the peephole did you see any bottles on any shelves at any time?

A. I could see bottles on the other side, and I could see bottles on the same side I was looking through.

Q. I am not asking you on the other side; I am asking you particularly in front of your view as you were looking through the peephole, you told us there was a shelf there. Now, were there bottles on that shelf?

A. Oh, yes.

Q. There were a lot of bottles?

A. I wouldn't say there was [66] a lot of bottles. I will say there was bottles.

Q. Isn't it true that this peephole is almost——

Mr. Davis: Your Honor, I am going to object to the form of that question, because these pictures



(Testimony of William H. Grady.)

are only in for identification, and the witness has stated he does not recognize that picture as being the peephole he used at that time. Now counsel is using this picture, for which no foundation has been laid, and directing questions to "When you looked through this peephole." We do not admit that that is the peephole.

Mr. Klein: I will promise to connect it, if it please the Court. This is naturally part of our case.

The Court: You mean you had pictures taken at the time this event took place on January 10th?

Mr. Klein: We had pictures taken some time; the photographer will testify when they were taken, Judge.

Mr. Davis: I still object to the form of this question, because the witness said in looking at that picture he does not recognize that peephole.

Mr. Klein: I will withdraw the question.

Q. Mr. Grady, isn't it a fact that the peephole, the top of the peephole was on a level with a cross shelf, cross board running——

A. From your question I would say then you infer that the peephole was on the inside where I could not see anything. [67]

Q. No, I am not inferring that, at all. Here is the shelf, and it is 33 feet deep. A. Yes.

Mr. Davis: Just a minute. I believe counsel has made a mistake. It is 33 inches.

Mr. Klein: 33 inches. Pardon me, Mr. Davis; I thank you.

Q. Isn't it a fact that all of the peepholes were

(Testimony of William H. Grady.)

practically at the place where the cross shelf that was 33 inches wide ran across the vertical shelf?

A. No, sir, that is not my recollection.

Q. That is not so. On that day about 10:30 you say you saw Mr. Bruno and Mr. Pitta enter that room, is that right?

A. Yes, sir.

Q. Who came first?

A. Mr. Bruno, as I recall it.

Q. Mr. Pitta did not reach out and take anything from any beer case?

A. No, sir.

Q. You never saw him do that?

A. No, sir.

Q. They came into the room. What did they do after they entered the room?

A. They were talking, and Bruno sniffed some of the heroin, and then he handed it to Joe Pitta.

Q. You saw that clearly?

A. Oh, yes.

Q. Did you observe the faces of both men during the time they were in there?

A. Well, yes, of course I did.

Q. Were both men standing or sitting?

A. To my recollection, Pitta was sitting. Pitta was sitting in the room to my right. That is my recollection of him at that time.

Q. Bruno was standing, is that right?

A. Bruno was standing.

Q. What was Pitta sitting on?

A. Some type of a case.

Q. What kind? Wooden or cardboard?

A. There are both kinds in there, so I do not know what kind he was sitting on.

(Testimony of William H. Grady.)

Q. What is your best recollection?

The Court: He said he does not know.

Q. (By Mr. Klein): You are sure that there were both kinds of cases in there?

A. There is one in one of your pictures there.

Q. I am just asking you now: Are you sure there were both kinds of cases there? A. Oh, yes.

Q. And then Bruno and Pitta left that room together, is that [69] right? A. Yes, sir.

Q. Did you see who placed the bindle in the beer boxes? A. Yes, sir, Bruno.

Q. Did he place it in there before he shut the door? A. No, as he had the door open.

Q. As he had the door open. And what did he do? Just tell us that.

A. Just reached over, pushed the bindle in between the two beer cases, stood up and walked on.

Q. Did he leave the door open?

A. No, he closed the door.

Q. He closed and locked the door?

A. He closed and locked the door. The door was always kept locked.

Q. Did you discuss your testimony with Agent McGuire today? A. Today?

Q. Yes.

A. I discussed it with Mr. Davis, Mr. McGuire—we always discuss our testimony.

Q. Did you discuss it today? A. Yes.

Mr. Klein: Thank you. That is all.

Mr. Davis: That is all. May I ask if Agent Briscoe has arrived yet? He is coming from out of town. [70]



ELMER A. BRISCOE

called as a witness on behalf of the Government;  
sworn.

Q. (By the Clerk): Will you state your name  
to the court and jury?           A. Elmer A. Briscoe.

Direct Examination

By Mr. Davis:

Q. Mr. Briscoe, what is your occupation, please?

A. I am a lieutenant in the Criminal Division  
of the Sheriff's Office at Stockton.

Q. What was your occupation during the months  
of January and February, 1946?

A. I was an agent with the U. S. Bureau of  
Narcotics.

Q. Directing your particular attention to the  
10th day of January of that year, did you have  
occasion to be in the storeroom underneath the Star  
Dust Bar in San Francisco?

A. Yes, sir, I did.

Q. I will show you this package marked "Gov-  
ernment's Exhibit No. 1 for Identification" and ask  
you if you have seen this before.

A. Yes, sir, I have.

Q. When did you see that?

A. I have my initials on here, Mr. Davis, and  
the date, January 10, 1946.

Q. Do you recall from whom you received this?

A. No, I can't say, Mr. Davis, off-hand. [71]

Q. What did you do with it, if anything, after  
you put your initials on it?

(Testimony of Elmer A. Briscoe.)

A. It was marked for identification and then submitted to the United States Chemist for its analysis.

Q. I will show you this envelope marked Government's Exhibit No. 2, Laboratory No. 152,489, and ask you if you have seen that before.

A. Yes, sir.

Q. Is that the envelope in which this package was contained when you delivered it to the chemist?

A. Yes, sir, that is correct.

Mr. Davis: That is all.

#### Cross-Examination

By Mr. Klein:

Q. Can you tell the ladies and gentlemen of the jury when this little package containing your initials was delivered to you?

A. I believe that package was obtained——

Q. When was it delivered to you?

A. May I see the package again, please? And may I see the other envelope, sir? At 7:30 p.m., January 10, 1946.

Q. That was delivered to you on January 10?

A. Yes, sir. This envelope is in my handwriting.

Q. By whom was it delivered to you?

A. I was working with agents Grady, Hays and McGuire, and we were in the basement of the Star Dust Bar at the time. [72]

Q. Was there any memorandum on this envelope to enable you to tell the ladies and gentlemen of the jury by whom it was delivered to you?

(Testimony of Elmer A. Briscoe.)

A. I believe it was Agent Grady.

Q. Then what did you do with it?

A. I took it to the United States chemist for analysis.

Q. On January 10th?

A. Well, it was possibly the second day—I am not certain. It was marked for identification at 7:30 p.m. It was probably the morning of the 11th that I took it to the U. S. chemist for analysis.

Mr. Klein: That is all.

Mr. Davis: That is all. If the Court please, the Government will move to introduce the exhibits previously marked for identification in evidence and rest its case.

The Clerk: You are referring to Exhibits 1 and 2?

Mr. Davis: Yes.

Mr. Klein: If it please your Honor, I object to the introduction of these exhibits for the reason that it definitely appears from the testimony in this case that the only connection that this defendant had with these exhibits in any way was that at a certain time it was handed to him, but he took——

The Court: I do not want you to argue the case now. You will have a chance to do that later. What is the specific objection to the introduction of these exhibits? [73]

Mr. Klein: The objection, if it please the court, is they are entirely incompetent, irrelevant and immaterial, and have no connection in proving any of the issues, in this matter as to this defendant.



The Court: The objection is overruled and the exhibits will be admitted.

(U. S. Exhibits 1 and 2 for Identification were thereupon received in evidence.)

The Court: The Government rests?

Mr. Davis: Yes.

Mr. Klein: May it please the court, it is after four. We have been trying to get in touch with some witnesses. We did not anticipate going to trial today. I assume that it is time to take a adjournment.

The Court: No, I intended to proceed with this case and if necessary hold a night session tonight, because I have another case set tomorrow.

Mr. Klein: If it please your Honor, I will try to facilitate the speedy disposition of it, but there were certain witnesses that I could not get, and it was only at the last moment that we determined to go to trial, and under the circumstances I submit I should have some opportunity to get a sufficient number of witness to properly present my case to the court. Your Honor recalls the statement this morning that Mr. Grady had no idea, he being practically the last [74] one——

The Court: I think that is probably true. I had told all the defendants to be ready.

Mr. Klein: We had no idea we were going to trial. We want to dispose of it.

The Court: The Government has rested its case. Now you propose to put on witnesses?

Mr. Klein: Yes.

The Court: I will continue the case then until tomorrow morning at 9:30.

Mr. Klein: Thank you.

The Court: Ladies and gentlemen, we will take an adjournment until tomorrow morning at 9:30. I will ask you to please bear in mind that in the interval it is your duty not to discuss this case among yourselves or talk to anyone else about it, or to form or express any opinion concerning the case until the matter is finally put in your hands for decision.

The jurors may be excused until tomorrow morning at 9:30.

(Thereupon an adjournment was taken until tomorrow, April 23, at 9:30 o'clock a.m.) [75]

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Wednesday, April 23, 1947, 9:30 o'Clock A.M.

The Court: Counsel, do you wish to make some motion in the absence of the jury?

Mr. Klein: Yes.

The Court: Will you take the jury out?

Ladies and gentlemen of the jury, you will be excused for a few moments because of the fact that counsel wishes to make a motion in the absence of the jury. I wish to caution the jury again that no member of the jury should converse with any other person or among themselves in connection with the trial of this case until the case is finally submitted to you.

(Thereupon the jury retired from the courtroom.)

Mr. Klein: May it please the Court, at this time, on behalf of my client, I desire to make a motion to have the court instruct the jury to bring in a verdict of not guilty on the ground that there has been a total failure of proof upon a reading of the Jones Miller Act and a reading of Count 23 of the Indictment upon which the defendant is now being charged. It clearly appears that this defendant is charged as follows: That on the 10th day of January, 1946, in the City and County of San Francisco, State of California, he fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and a preparation of morphine, to-wit, a lot of heroin in quantity particularly described as [76] one bindle, containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew. I respectfully submit to the court that all of the evidence in this case is clearly to the effect that, taking the testimony entirely as adduced from the Government witnesses as true, that all Mr. Pitta's connection with this affair was that he went into the storage liquor room and Bruno, some other person, had taken a bindle from its hiding place. Bruno took it out. They went into the liquor room, and he then took some of the contents upon a knife, sniffed it, and gave the contents or gave the bindle, rather, to Pitta, who likewise put some upon his knife and sniffed it, and that Pitta immediately



returned the bindle to Bruno or the other man who was with him there at that particular time; that he did not place it in the place of concealment, and had nothing to do with that, if it please your Honor, and while I am mindful of the fact that the second portion of the Jones-Miller Act provides that once it is proven that the defendant had possession of it, the possession of it must be explained by him—in other words, the burden shifts practically on that particular point—yet in view of the fact that the uncontroverted testimony is that he did not take it from its place of concealment, and did not put it there, and had no knowledge of the fact, there is no evidence in this case that he did have knowledge of [77] the fact of where it was.

The Court: I just want to interrupt you there. The evidence does show that he was present along with this man Bruno, and that the jury could properly conclude, could it not, that he saw Bruno take a package from where it was concealed, and then after using it, Bruno returned it to its hiding place. If the jury accepted that testimony, they could be justified in bringing in a verdict.

Mr. Klein: The mere fact that Bruno took it out of there is not evidence of the fact that Pitta knew it was there. That is the point.

The Court: The defendant is charged with concealing or facilitating the concealment.

Mr. Klein: But, may it please the Court, it does not appear that before he came into that place—there is no evidence that he knew there was any concealment of any kind.

The Court: That may be true, except the jury might conclude from the fact that the two of them came in together that he knew about it, and then there was a further concealment, according to the testimony, when the bindle was replaced in its place of concealment in the presence of the defendant. That concealment would certainly take place in the presence of the defendant.

Mr. Klein: Not necessarily. It does not clearly appear from the evidence in this case that it was concealed while [78] he was still there, because the evidence is to the contrary. The evidence is that he went out first, and that then Bruno came out, concealed it, and locked the door. There is no evidence that he stayed there or knew what disposition Bruno made of it, and if it please the Court, on the question of inferences there must be proof, and not inferences on that particular point.

The Court: That is true. All of the evidence given by the agents would certainly be sufficient to sustain a verdict that the defendant facilitated the concealment of hits bindle.

Mr. Klein: I examined every single, solitary case on this point. I examined every case under the Jones-Miller Act that was ever taken up on appeal in the entire country, and there is not one single solitary case that turns on that point. There has not been one appeal where that point was raised. The cases have all turned on possession, either by a ship's steward, somebody who brought it over in connection with the sale, or something of that kind.

The Court: I think possession at the very place

where the bundle was concealed is sufficient under the Jones Act to make out the Government's case. I never heard any different point than the point you are now making raised.

Mr. Klein: You see, your Honor, the statute makes it a crime, not for possession, but for concealment.

The Court: Yes, but the statute also says that possession [79] is sufficient evidence.

Mr. Klein: Possession by the defendant, but here, if it please the court, there is no possession. The possession is clearly the possession of Bruno. There can't be any inference from the testimony that has been adduced so far that Mr. Pitta had the possession of it.

The Court: He did. The agents testified he took possession of it and used it.

Mr. Klein: One moment, your Honor.

The Court: He had possession of it, because he used it according to the agents' testimony.

Mr. Klein: That is quite true.

The Court: I do not think we can draw any fine distinctions. If we started to say, going into the metaphysical question of whether a man had possession of it a minute, a half minute, or an hour, you would inject into the statute such refinements it would make the statute utterly incomprehensible. You could not enforce it.

Mr. Klein: No, the word "possession," if it please the court, has a well defined meaning in the law, and I do not think that the word "possession" as we understand it in the law, contemplates such a



possession as has been testified to in this case. Possession is the undoubted possession and ownership, the possession and ownership that goes with it. The fact that it is under your control, that is the possession, [80] I think, that is contemplated by the law.

The Court: I do not see how you could have more of a measure of control than taking the evidence at its face: The fact that the man had it in his hand and used it.

Mr. Klein: Yes, but where it is not yours——

The Court: You do not have to have title. Possession is different from title.

Mr. Klein: That may be true, but temporarily under your control, and in this particular instance it clearly appears that the possession and control of it, save for those few moments in the storage room, was absolutely in the hands of the other man. That is why I urge that upon the court.

The Court: Part of the time it was in the possession of the other man, of course. Is that the point of your motion, Mr. Klein?

Mr. Klein: That is the point of the motion.

The Court: I think, under the provisions of the statute, itself, in the face of the evidence, there is no basis for my directing a verdict in the case. I will deny the motion.

Mr. Klein: Exception.

Mr. Davis: If the Court please, in order that the record may be clear, I am not certain that I dismissed these other counts before trial, or whether I stated I would be willing to dismiss them. Before

the case goes any further I wish to move at this time to dismiss all counts in this indictment against [81] Joseph Pitta except the——

The Court: The 23rd count.

Mr. Davis: The one we are on trial on now.

Mr. Klein: The others that are pending?

Mr. Davis: I could dismiss Joseph Pitta in that indictment. In that indictment, Mr. Klein, we have been carrying it along because that happens to be the indictment on which all the defendants are on bail; and it merely follows the other indictment.

The Court: That is just the purpose of it, and as soon as judgment one way or the other is rendered in this case, either conviction or acquittal, then I will dismiss that charge as well. You may bring the jury in.

(The jury returned to the courtroom.)

The Court: The jurors are all present. You may proceed.

Mr. Klein: May it please the Court and you, ladies and gentlemen of the jury, at this time it is my privilege to explain to you the defense in this case. Mr. Pitta, a man now about 43 years of age, will tell you that he is taking care of his brothers' and his family's business interest in Oakland, and in what is known as the Island up near Stockton. He will tell you that he knew the owners of the Star Dust Bar; that his brothers conducted a bar in the City of Oakland, and that over the space of about two years, and on possibly three or four occasions, he went into that bar at Sutter and Larkin [82] for the purpose of effecting an exchange of liquor.

Scotch was hard to get. Other brands may have been hard to get. And bar owners had exchanged different brands that they may have brands that the other fellow had that they were not able to get, and for that purpose he was in the Star Dust Bar at Sutter and Larkin Street on perhaps, two, three, four occasions covering a period of two years. He was never in the bar late at night. We will then further demonstrate to you mathematically by computation that the peephole that has been referred to by the Government witness as 1 and 2 is located outside of a wall running practically across here (indicating on diagram). Today that place has changed somewhat by the construction of another wall, but at the time alleged in this indictment this wall ran straight across, and peepholes 1 and 2 were about 27 inches from this wall; that furthermore the door entering the liquor room swings from left to right, and that that door is about 35 to 36 inches wide, and is about six feet high. That is a substantially-built wooden door without any glass panels in it, so that no part of it is transparent; that when that door swings out and is opened, no one standing at peephole 1 and 2 can possibly see what is going on in that hall.

We will further prove to you that along this side, the northern side of the stock liquor room there are substantial wooden shelves; that the first three partitions are the places [83] where peepholes 3, 4, 5 and 6 were located. I think peephole 3 is in the second partition, peepholes 4 and 5 is in the third



partition, and peephole 6 is in the next one, with these shelves running about five or six feet high.

We will show that this liquor room is about 9x9—not quite that. We will show you that the distance from the foot of the shelving on the north side to the foot of the shelving on the other side—and there are shelves over here—covers about 102 inches.

We will show you that the rear portion of this room has a slanting ceiling so that nobody could stand there, and that is where the full cases are kept; and we will show you the condition of this room as of January, 1946, and there will be testimony to the effect that that room was in the same condition as it is today.

We will offer you testimony that when the liquor was brought into that room, it was taken out and placed upon the shelves, on this side and on this side, and that no boxes of any kind or no chairs of any kind were in there.

We will offer you testimony that the location of these peepholes are about 40 inches from the ground, and that no one sitting upon a chair, such as this witness chair in this case, or a similar chair, could possibly sit on that chair and look through any of those peepholes with any degree of comfort; that in order to look through those peepholes at all you would have to get way down in this kind of position (indicating). [84]

We will then show you mathematically—and this is capable of exact mathematical computation—that when you look through these peepholes in that position, the very most that you can hit, if a man was

standing clear at the extreme southern side of the liquor room and was paper thin in width—in other words, almost like the pictures you see in a motion picture, where they have not yet developed the three dimensions—that if a man is standing at the extreme southern side, paper thin in width, the very farthest he could possibly see would be up to about here, about 40 inches, and upon that showing and the testimony in this case I am going to ask you to return a verdict of not guilty.

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### NINO BRUNO

called as a witness on behalf of the defendant; sworn.

The Clerk: Q. Will you state your name to the court and jury?

A. Nino Bruno.

### Direct Examination

By Mr. Klein:

Q. Mr. Bruno, where do you live?

A. 1030 Larkin.

Q. What is your business?

A. Well, I have been at the Star Dust for two years.

Q. What is the Star Dust?

A. It is a bar. [85]

Q. Where? A. 1030-1098 Sutter.

Q. Are you the owner of that bar?

A. No, my brother is, my brother Joe.

Q. You are working there? A. Yes, sir.

(Testimony of Nino Bruno.)

Q. What shift do you take there?

A. Well, I used to have the morning shift. Now, I have it all day and night.

Q. You say the morning shift. What hours does that cover?

A. That covers from 10 in the morning until 5 o'clock at night, but I used to hang around there most of the time.

Q. When you say you have it all now, just explain to the ladies and gentlemen of the jury what you mean.

A. I mean from 10 in the morning until 12 at night.

Q. I show you a diagram here. Can you see that? A. No, I can't see it very good.

Mr. Klein: May I ask the witness to step down to the blackboard, your Honor?

The Court: Very well.

Mr. Klein: Q. This is a diagram that has been offered in evidence here as Government's Exhibit 3 in evidence. It is alleged to represent the portion of the storeroom outside of the bar. Here is the entrance to the bar, coming out of the bar, here, coming into this hallway, and here is the [86] entrance to your liquor room.

A. Here is the entrance right here (indicating).

Q. This is the liquor room right there and there is the storage room behind the liquor room. Are you familiar with that now? A. Yes.

Q. You say you have been there two years?

A. Yes, sir.



(Testimony of Nino Bruno.)

Q. Have you the keys to this liquor room?

A. Yes, sir.

Q. Were you in that liquor room in the month of January, 1946?      A. Yes, sir.

Q. Have you been in that liquor room since that time?      A. Four or five times a day.

Q. Four or five times a day since then. Can you tell the ladies and gentlemen of the jury whether that liquor room today is in the same condition as it was in January, 1946?

A. Yes, sir, it is.

Q. Pardon?

A. It is. It has always been that way. The shelves are in the same place.

Mr. Davis: I couldn't hear the answer.

The Witness: I say the shelves are still in the same place and the bottles are still there, except what I used. When the new cases come in I put them on the shelves.

Q. You mean when liquor is delivered to you, what do you do [87] with that liquor?

A. I open it up and put it on the shelves. What I can't put on the shelves I stack in the corner.

Q. Was there liquor placed on the shelves on the north side of this since January, 1946?

A. The shelves have been in the same place all the time. There are shelves on both sides of the place.

Q. Has there been liquor in bottles on the shelves on both sides?      A. Always.

Q. Is that right?      A. Yes, sir.

(Testimony of Nino Bruno.)

Q. Were there ever any chairs in that place?

A. No, sir.

Q. Were there ever any wooden cases in that liquor store?

A. No, sir.

Q. What kind of cases are there, if any?

A. Cartons.

Q. Just explain to the ladies and gentlemen of the jury the size of those cartons, please.

A. They are about 6x10, I guess. They are regular liquor cartons.

Q. When you say 6x10, does that mean 6x10 feet?

A. I mean a foot wide and maybe—I don't know exactly—I think it is—I think they are about a foot wide and about [88] that long—a foot and a half or two foot long. I don't know what it is. I can't figure it out.

Q. What is done with the empty cartons?

A. We throw them out. We have to throw them out.

Q. Were there every any cartons actually in this place? Do you leave them in that place?

A. No, we do not. The janitor is supposed to burn them because they have numbers on them.

Q. When you say "supposed to burn them," has the janitor access to your liquor room?

A. No, not to the liquor room. Nobody has access to that, only my brother and I have keys to it.

Q. Who takes out the empty cartons?

A. I throw them out when I empty them.

(Testimony of Nino Bruno.)

Q. You throw them out. You may take the witness.

### Cross-Examination

By Mr. Davis:

Q. Mr. Bruno, you say during the month of January, 1947, you were one of the owners of this Star Dust Bar?

A. I am not the owner. My brother Joe is the owner.

Q. You work there? A. Yes, sir.

Q. Did I understand you to say that at the present time the liquor room is in the same condition as it was on January 10 of 1946?

A. Well, the same—the shelves are in the same place. There [89] might be a couple of cases short or a couple of cases more in the corner of the place. The shelves are in the same place. Most of the bottles are in the same place. When I take some out I put some in.

Q. When you say the liquor room, do you mean this entire situation, here? Has there been any change in this hallway?

A. In the hallway? I mean the liquor room. I am not talking about the hallway. The hallway has a new partition on it.

Q. The hallway since January 10th has a new partition, is that correct? A. Yes.

Q. Will you come down and show us where the new partition is now?

A. This is the liquor room (indicating). There is a partition up there like that, crossways.



(Testimony of Robert Gibbs.)

Mr. Klein: Leaving out the bottles, if it please the Court, they are offered for the limited purpose of showing the shelving.

The Court: I would not allow them in evidence because that would be error and would be misleading. You can't take something out of a photograph and say you are offering something else in the photograph. You do not need a photograph to show the condition of the shelves. The witnesses have described it. If you had a picture of the empty shelves, that might be one thing. I think the evidence is completely without foundation. I will sustain the objection.

Mr. Klein: Exception.

The Court: That is all.

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IRVING GUBIN

called as a witness on behalf of the defendant; and having been first duly sworn, testified as follows:

The Clerk: Q. Will you state your name to the Court and Jury?

A. Irving Gubin.

Direct Examination

By Mr. Klein:

Q. Mr. Gubin, where do you live?

A. I live at 2386 - 34th Avenue, San Francisco.

Q. Did you during your youth attend the University of California?

A. Yes, sir.

(Testimony of Irving Gubin.)

Q. Did you graduate from the University?

A. In 1926.

Q. Did you thereafter take any special course?

A. No, I graduated with a Bachelor of Science degree in Engineering.

Q. In Engineering? A. Yes, sir.

Q. Electrical Engineering? A. Yes, sir.

Q. Did you follow that vocation for a period of time?

A. I followed it for about twelve years. [104]

Q. Mention some of the firms you have been with?

A. I was with Bilsby Engineering and with Pacific Gas and Electric Company and some time with Six Companies of California.

Q. Were you likewise in the war effort during the last war?

A. I spent three and a half years in technical service, the Ordnance Department.

Q. And in connection with your work in these different industrial organizations and the Ordnance Department, did you have occasion to study sights and measure angles to determine vision?

A. I have done a lot of surveying.

Q. Did you have occasion to study sights and determine vision from angles?

A. Yes, in the Ordnance Department we used a lot of sights for various types of guns and howitzers.

Q. Were you taken to the premises at 988 Sutter Street yesterday? A. Last night.

(Testimony of Irving Gubin.)

Q. Were you there likewise this morning?

A. I was there this morning.

Q. Did you have access to the liquor room at that place?

A. Yes, I was taken in there.

Q. May I call your attention to this exhibit, if you will be good enough to step down here? [105]

Mr. Davis: If the Court please, I do not know whether an objection at this time is proper. I was going to wait for another question, but I presume we are getting to the point of it now. I am going to object to the testimony of this witness on the ground, first of all, I do not believe it is possible to qualify an expert as to a matter of sights, as to what you can see through a hole. That is something that is not covered——

The Court: I think you had better wait until you see what the nature of the questions is going to be.

Mr. Klein: Q. I call your attention to Government's Exhibit 3, which is intended to portray the rooms adjacent to that Star Dust Bar. Here is the entrance from the bar coming in and here is this wall coming this way, and here is the liquor room (indicating). Are you familiar with that?

A. Yes.

Q. Here is the room known as the liquor room, and here are some alleged peepholes, 1, 2, 3, 4, 5 and 6. Was your attention called to those last night and this morning?

A. They were.



(Testimony of Irving Gubin.)

Q. Did you make any measurements in that room of the shelving? A. Yes, I did.

Q. Did you measure the width and length of the room? A. I did.

Q. Did you measure the width of the door leading into the [106] liquor room? A. I did.

Q. How does that door open? Does it swing from left to right this way?

A. The door swings just as it is shown in the sketch.

Q. This way (indicating), is that right?

A. That is right.

Q. Did you observe the location of peepholes 1 and 2 outside of this wall? A. I did.

Q. You stated you made measurements of the shelving. Describe what kind of shelving was in that room.

A. The shelves extend as shown on the sketch here along the south and north side, and the ones alongside of the apertures or peepholes extend 25½ inches along the north wall.

Q. Wait a minute, now. When you say they extend 25½ inches along the north wall——

A. Out from the north wall.

Q. Can you draw on this board from your experience as an engineer the type of shelving that is in there?

A. This will represent the shelf along the north wall. The bottom shelf is 25 inches from the floor and extend out 25½ inches. There there is a shelf—these are center lines, because the boards are all

(Testimony of Nino Bruno.)

and keep everything stacked up. If it was fifteen minutes or if it was a half-hour, I can't tell you.

Q. You say there were no wooden cases in there. How do you know there were no wooden cases in there on January 10?

A. No liquor comes in in wooden boxes.

Q. No liquor at all?

A. I haven't got any wooden boxes.

Q. Did you have any on January 10?

A. Well, I don't remember receiving any liquor in a wooden box. I always got it in cartons.

Q. You do not know, however, whether there could not have been some wooden boxes?

A. I have been there two years and I have received no liquor in wooden boxes.

Q. You have not received any?

A. No, sir, not in wooden boxes.

Q. Was there any stock of liquor there when you took it over?      A. Yes, there was.

Q. So you do not know whether or not on January 10 there could have been liquor there in wooden boxes, do you?

A. Well, we took inventory.

Q. Do you know now of your own recollection today whether or not there were any wooden cases in there on January 10?

Mr. Klein: I submit, if the Court please, the witness has answered the question to the best of his ability.

(Testimony of Nino Bruno.)

Mr. Davis: I do not believe he has. His last answer was he took inventory. [95]

The Court: Read the question.

(Question read.)

The Witness: A. No, I can't say there was—I don't remember exactly the date, but I don't remember seeing any wooden cases in there.

Mr. Davis: That is all.

### Redirect Examination

By Mr. Klein:

Q. Mr. Bruno, is it your testimony that for over two years since you have been there you have received no liquor in wooden boxes in that place?

A. That is right.

Q. Is that your testimony? A. Yes, sir.

Q. May I again call your attention to this diagram? This is the liquor room. When you say you stack it up, what portion of the liquor room is it stacked up in? Near the door or——

A. In the back part here.

Q. In the back part? A. Yes.

Q. Explain the ceiling in the back part.

A. The ceiling is about from here up. It is a little too low for me. We try to keep it stacked up there. The fellow with the truck—the present driver is pretty big. He has to duck when he gets in. He leaves it there and figures when I get a chance to check it up, I will stack it on the side.



(Testimony of Nino Bruno.)

Q. What portion is this (indicating) ?

A. Those are steps.

Mr. Klein: That is all.

Recross-Examination

By Mr. Davis:

Q. Mr. Bruno, I will show you this Exhibit B For Identification, which purports to be a picture taken at some unknown time of the liquor store-room at the Star Dust Bar, and ask you to examine that and tell the Court and Jury whether or not it depicts a wooden box?

A. I don't know. I never seen that box there before.

Q. You never saw the box in there?

A. No.

Q. But you do see a wooden box in that picture?

A. Well, maybe my brother received it and opened it. I don't know.

Q. I didn't ask you whether it was open or closed, or who received it. I asked you if you see a wooden box in that picture.

A. It is a wooden box.

Q. I show you Defendant's Exhibit C For Identification, again purporting to be a picture of the liquor room of the Star Dust Bar taken at some unknown time, and ask you if you see a wooden box in that picture. A. The same box.

Q. I did not ask you that. I asked you if you saw a wooden [97] box in the picture.

(Testimony of Nino Bruno.)

A. Well, my brother received this stuff——

Q. I didn't ask you that.

The Court: Q. Is there a wooden box there?

The Witness: A. There is a wooden box.

Mr. Davis: Q. I show you Defendant's Exhibit D For Identification, again purporting to be a picture taken at some unknown time of the liquor storeroom at the Star Dust Bar, and ask you to examine it carefully and to count how many wooden boxes you see in there?

A. This is not inside the liquor room. This is outside the liquor room.

Q. That is outside the liquor room.

A. Yes, sir.

Q. That is outside the liquor room?

A. Yes, sir.

Q. Did you ever see any wooden boxes outside the liquor room?

A. They are all wooden boxes, all beer boxes.

Q. All beer boxes?

A. Well, some of them are cartons. All beer boxes, most of them—Lucky Lager is all wooden.

Q. And the other are paper cartons, is that correct? A. Cartons.

Q. These pictures offered by defense counsel truly represent a picture of the liquor store room, and after having examined [98] them you realized you were mistaken in saying you never saw a wooden box——

A. Well, there is two because——

The Court: Just a moment.

(Testimony of Nino Bruno.)

Mr. Klein: Just a moment, if it please your Honor, I submit that is argumentative.

The Court: It is argumentative. The testimony speaks for itself.

Mr. Davis: I will widthdraw it. That is all.

The Court: Anything else of this witness?

Further Redirect Examination

By Mr. Klein:

Q. Showing you what has been offered here as Defendant's Exhibit B for identification, will you be good enough to point out to me the wooden box there?

A. This one right here (indicating).

Q. What kind of wooden box is that?

Mr. Davis: I am going to object to that question, your Honor. I do not believe it is proper redirect examination.

The Court: I think we are wasting an awful lot of time on minor matters.

Mr. Klein: I want to show where it is. I want to show what it is and the size of it.

Mr. Davis: I do not see where it is material to this case at all.

Mr. Klein: It is material from this standpoint, if it [99] please your Honor: it is the contention they sat on a wooden box.

The Court: This examination has nothing to do with what the Government's lawyer asked the witness about. He said he did not see any wooden boxes in there, and he points out now there are



(Testimony of Nino Bruno.)

some in this photograph. Now, what they were used for was not gone into. That was the only subject of the inquiry.

Mr. Klein: Tell us where that wooden box is.

A. On a shelf.

Mr. Davis: I object to this, your Honor. No matter where it is, those pictures do not represent what happened on January 10. My only purpose in offering them was to cross-examine the defendant on his testimony that he never saw a wooden box in there in the whole two years that he was there, and by defendant's own pictures I show that there was a wooden box in there. Now, where it was or what it was for or what kind of box is absolutely immaterial.

The Court: I think you have spent enough time on this matter.

Mr. Klein: I will refrain from further examination on that until I have had the opportunity to offer these pictures in evidence for the perusal of the Jury. Thank you, Mr. Bruno.

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### ROBERT GIBBS

called as a witness on behalf of the defendant; and having been first duly sworn, testified as follows:

The Clerk: Q. State your name to the Court and Jury.

A. Robert Gibbs.

(Testimony of Robert Gibbs.)

Direct Examination

By Mr. Klein:

Q. Mr. Gibbs, where do you live?

A. 2801 Nicol Avenue in Oakland.

Q. What is your business?

A. I am a photographer by trade, sir.

Q. Are you in business for yourself or employed??

A. I am employed, sir.

Q. By whom? A. Mr. Nathenson.

Q. What was your business in the year 1946?

A. Photographer.

Q. Were you employed by Mr. Nathenson at that time?

A. Yes, sir.

Q. Are you familiar with the premises known as the Star Dust Bar at 988 Sutter Street?

A. Yes, I was called there last year to take some pictures.

Q. In the year 1946 were you directed to take some pictures at that place?

A. Yes, sir.

Q. Did you personally take those pictures? [101]

A. Yes, sir.

Q. You stated you have been a photographer for how many years?

A. About fifteen years.

Q. I will show you——

Mr. Davis: I am going to object, your Honor. The proper foundation has not yet been laid. We do not know the date of these pictures yet.

Mr. Klein: I am going to come to it.

Q. I will show you some pictures and ask you whether you took some pictures at that place, and

(Testimony of Robert Gibbs.)

that these represent the pictures that you took (handing pictures to witness).

A. Yes, I took all of them.

Q. When did you take those pictures?

A. Approximately in May.

Q. Of what year?           A. 1946.

Mr. Klein: Now, may it please the Court, I submit that I have laid the foundation for asking him to identify these pictures and offering them.

Mr. Davis: Your Honor, obviously the pictures are improper. They were taken in May, 1946, and we are talking about something that happened on one particular day, January 10, 1946.

The Court: What is the materiality of this?

Mr. Klein: I want to show by photograph the condition of [102] that storeroom with reference to shelves and bottles, and it has been testified to by Mr. Bruno that the condition of those shelves and bottles on those shelves is the same for the last sixteen months.

Mr. Davis: I can't see how there has been sufficient foundation to introduce in evidence and make a part of the record in evidence photographs taken months after this affair.

Mr. Klein: These pictures are offered for the limited purpose of showing the condition of that room, the shelving and the bottles on the shelves.

The Court: Yes, but that does not show the condition of the bottles or the contents on the day that that is charged in this indictment.



(Testimony of Nino Bruno.)

Q. You mean the partition is in this room or in the liquor room?

A. Wait a minute. This is the liquor room right here (indicating). Let me figure this out. Are these the holes they were peeking from? Yes, here is the partition right here. This all partition now (indicating).

Q. In this section here, which is the hallway in front of the liquor room, there is now a partition running diagonally across it, is that correct?

A. Yes.

Q. In the same general direction as this dotted line, is that correct?      A. Yes. [90]

Q. When you say that the liquor storeroom is in the same condition, I take it you mean as far the physical condition, the shelves, and walls, and so forth, right?      A. Yes.

Q. In other words, you do not have any independent recollection now of how many bottles or how many cases were in there on January 10th?

A. No, but the shelves have always been full. We always—the liquor that was in that corner is all rum and brandy. That stuff doesn't move. That stays there practically all the time.

Q. Which corner do you mean?

A. Where the peekholes were.

Q. That does not appear to me to be in the corner, Mr. Bruno.

A. Well, where them numbers are.

Q. You mean all that wall was just devoted to rum and brandy?

(Testimony of Nino Bruno.)

A. Rum and brandy, and it is still there.

Q. So your only basis for your statement that the condition of the room on January 10th was the same as it is today is——

A. There might be one or two bottles different. That is all. That stuff don't move. [91]

Q. Over a period now of two years you would say that that has not altered; you did not have more room at one time or less?

A. There would be a few bottles.

Mr. Klein: Pardon me. I submit it is not over a period of two years since January, 1946.

The Court: A period of about sixteen months, isn't it?

Mr. Davis: Sixteen months.

Q. You say over that period of sixteen months there might be only a difference of two or three bottles?

A. If there is a difference of a case, I usually put it in.

The Court: Q. The question was, he wants to know over a period of sixteen months whether there was a difference of two or three bottles.

The Witness: A. No, there is more than two or three bottles. It was six or seven different kinds of rum and several different kinds of brandy. I don't know exactly how many bottles missing, but there is about two cases to each shelf.

Mr. Davis: Q. In any event, you have no independent recollection of the number of bottles or

(Testimony of Nino Bruno.)

where they were or anything else on January 10, have you?      A. No.

Q. You say there were never any cases in that room, liquor cases?

A. Not wooden cases, no. Cartons, I said. [92]

Q. Of course, you have no independent recollection of whether or not there were any cartons in there on January 10, 1946, have you?

A. Why, sure, there is cartons. There always has been cartons in there. But they are all full and stacked in the corner.

Q. You mean there are no empty cartons in there?

A. When we empty the carton we throw it out.

Q. In that liquor room at all times there have been full cartons, is that correct?

A. Yes, stacked in the corner. When the liquor comes in we stack it up.

Q. Your reason for saying that if any cartons were there on January 10 they were stacked in the corner is because it is your custom to stack it in the corner, is that correct?

A. Well, inside the liquor room, yes.

Q. I mean, you have no independent recollection whether there were case in the middle of the floor, in the corner, or any place else on the 10th day of January, 1946, have you?

A. We don't keep them cases in the middle of the floor.

Q. That is what I am asking you: your only



(Testimony of Nino Bruno.)

reason for that statement is it is your custom or habit to put them some place?

A. Just as quick as the fellow brings them in the room, I stack it. If I haven't time, I go back fifteen or twenty minutes after and stack it. [93]

Q. But you do not know the condition of the cases in that storeroom on January 10?

A. Well, no.

Q. Other than it is your habit or custom to stack them? A. That is right.

Q. Do you mean to say it is possible for you, when a stock of liquor is brought into the storeroom, that within fifteen minutes every time it is brought in you can get in there and stack that away?

Mr. Klein: If the Court please, I object to that question as argumentative. The witness has testified. Counsel asks, "Do you mean to say?" He said it.

Mr. Davis: I do not believe it is argumentative, your Honor. Perhaps the first clause, "Do you mean to say,"—I *with* withdraw it and rephrase it.

Q. It is your testimony, then, that in this bar over the period of time that you have been in there, at any time that liquor is delivered, it is possible for you or someone else within fifteen minutes to get into the liquor storeroom and stack it all away, is that correct?

A. Every time—I try to keep the room clean. It doesn't have to be fifteen minutes. It might be five minutes. I always try to keep that room clean

(Testimony of Irving Gubin.)

three-quarter inches—then there is a shelf  $14\frac{1}{2}$  inches, and below that shelf, right alongside [107] the north wall, on these several apertures that extend two inches below that shelf. These shelves are all  $25\frac{1}{2}$  inches. There is a board shelf that is 15 inches above this shelf. These apertures are all along the north wall, and they are all not greater than two inches below the middle shelf.

Q. Let us clearly understand this: When you say this shelf, referring to the second section from the floor——

A. That is right.

Q. This shelf is  $25\frac{1}{2}$  inches wide, is that right, so that the end of the shelf would be at this end?

A. That is right.

Q. And this wall is the one to which the storeroom is adjacent?

A. That is right.

Q. This peephole that you refer to you say comes right to the top of the shelf?

A. No, the peephole is about four inches square, but it only extends two inches below the bottom of the shelf.

Q. Below the bottom of the shelf?

A. Below the bottom of the shelf.

Q. How many peepholes did you observe there through this storeroom?

A. In the storeroom there are four peepholes.

Q. Will you please be good enough to give us, if you can, the location of those peepholes?

A. The first peephole is 24 inches from the northeast corner. [108] It is marked here as No. 3.

Q. In other words, peepholes 1 and 2 are in

(Testimony of Irving Gubin.)

the liquor room, inside the liquor rooms; peephole 3 is how far from this wall?      A. 24 inches.

Q. And how far from the ground?

A. The distance from the ground is the sum of these totals here, which 40 inches exactly. The bottom of the peephole is 40 inches off the ground.

Q. And peephole No. 3 is where?

A. That is 51 inches.

Q. From where?

A. From the same—the northeast corner.

Q. Peephole 5 is where?

A. 66 inches.

Q. And peephole No. 6?

A. That is the last one I saw. That is 88 inches.

Q. From this corner?

A. From that same corner.

Q. And what is the situation with respect to their heights from the floor?

A. They are all 40 inches from the floor.

Q. What is the situation with respect to whether or not the peephole is directly below the shelf or not?

A. They are all not below two inches of the bottom of the middle shelf. [109]

Q. Did you take a measurement of the size of the room?

A. Yes, I took a measurement of the size of the room.

Q. What is the distance from the shelving, the outside portion of the shelving from the north side of the liquor room to the northerly side of the shelving on the south side of the liquor room?



(Testimony of Irving Gubin.)

A. It was exactly 102 inches. That would be from here to the shelves that started here. It is 102 inches.

Q. Did you go in the storeroom and look through the peephole?

A. I went in the storeroom and looked through the peephole.

Q. Can you figure out mathematically that if a person looked through peepholes 3, 4, 5 and 6, what would be the vision, the utmost vision on the south side of the wall from the floor?

Mr. Davis: Just a moment. This is where I am going to interpose my objection, on the first ground, that I do not believe it is possible to qualify any expert to testify as to what a person can see through a certain hole, and on the further ground that this man, the same as with the photographs, is testifying to a condition which existed up there last night and not a condition which existed on January 10. His testimony is really incompetent, irrelevant and immaterial.

Mr. Klein: May it please your Honor, we are offering the best testimony that we can under the circumstances. The peepholes are there, and if Mr. Davis makes any contention [110] that the peepholes are in any different position today than they were in January, he can take the Government agents to that location and have them view the peepholes to determine whether or not they are. We are offering the best testimony that it is possible for us to get. We have offered witnesses to show that

(Testimony of Irving Gubin.)

the condition of the room was the same as in January, 1946.

The Court: I think, Counsel, it would be error for the Court to allow testimony as to what some man looking through some hole up there on the wall yesterday saw.

Mr. Klein: That is not what I am asking him. I am asking him if it is possible from a mathematical calculation, having in mind the location of the peephole, and having in mind——

The Court: I do not see any question in mathematics involved here. It is just a question of what a man can see if he puts his eye in a place. That is all.

Mr. Klein; Not at all. This is a mathematical problem.

Mr. Davis: In the first place, the vision would not be the same. There are bottles that were changed since January 10.

Mr. Klein: We are not concerned with bottles. Leaving the bottles out, leaving everything out of there, it is a mathematical problem. Given a hole a certain distance from the floor and from the protruding shelf, you can figure out [111] mathematically what the utmost possible vision would be. That is a mathematical problem.

The Court: You mean how far you can see?

Mr. Klein: Not how far; how far you can see from the ground, Judge.

The Court: Didn't the witness testify that this peephole extended above the shelf, too?

The Witness: Yes, sir.

(Testimony of Irving Gubin.)

The Court: What is the good of the testimony then?

The Witness: The shelf blocks it out in the back, your Honor.

The Court: You just said a moment ago, if I understood you correctly, the peephole extended above and below the shelf. Only two inches were below the shelf.

The Witness: Two inches were below, but the shelf has a certain width and that covers it up. You can't see above that peephole.

The Court: That is what I am asking.

Mr. Davis: Furthermore, I submit you can't work it out mathematically. You might be able to work it out mathematically on a range finder or something like that, but I submit it is common knowledge, and the Court can take judicial notice, that the vision you have through any aperture depends largely on the height of the individual, the position in which he is looking, whether he moves his head a fraction or his eye; [112] you can look through at different angles. If you look directly through an aperture at one fixed point I will admit you could figure out at the other end what the field of vision would be, just as if you look through a pair of binoculars a distance of 100 feet, and the binoculars are a certain power, you will have a vision at so many feet; but the moment you move the binoculars a fraction of an inch, you change that vision, and we can't go back now and establish in what manner the agents moved their



(Testimony of Irving Gubin.)

heads or craned their necks, and I think it is impossible and would be in error, misleading the Jury, in what an agent who said he saw something to allow testimony that he could not have seen.

Mr. Klein: We do not want error. I do not care what position the agent had his head in. I do not care how he sat. I do not care how he looked. I am offering this mathematical problem that given this shelf at this height from the floor, with an aperture two inches below this shelf, the shelf extending  $25\frac{1}{2}$  inches, in a room 102 inches wide, what is the utmost possible line of vision across that room? I do not care how he looked, where he looked or what he looked at.

The Court: You do not mean his vision across the room? I suppose what you are trying to develop is that if you are looking under the shelf you can't see what is above it.

Mr. Klein: No, this is what I am trying to develop: no matter how you look, looking through this peephole in any [113] manner that you want, the utmost possible line of vision along the other side strikes at a certain distance, and not above that. That is what I am trying to develop, your Honor. It is a mathematical problem and not a question of all this.

The Court: All you are trying to show is if you look through a peephole under this board, looking out you can only look a certain distance upward at a very slight angle. I suppose that is what the witness is going to testify to?

(Testimony of Irving Gubin.)

Mr. Klein: The utmost vision.

The Court: What is the materiality of that?

Mr. Klein: On the question of the ability of the agents to see the man in the room, to see the face of the man in the room.

The Court: You are offering this testimony to show the agents did not see the man in the room?

Mr. Klein: That is right.

The Court: And they are not telling the truth?

Mr. Klein: That is right.

The Court: I will allow the witness to testify as to the range of vision.

The Witness: Taking the problem of two inches below, which is the farthest down you can see, and passing a plane along this shelf, it so happens it comes exactly to two congruous triangles—I have exaggerated in here—well, I will drop it below.

The Court: Let us shorten this.

Q. What is the highest point above the shelf?

The Witness: A. These two things are in proportion. 250 to 102, as 2 is to 8; so you would add 8 inches onto the 40 inches——

The Court: Q. You could see 48 inches above the ground at the farthest point?

A. Yes, at the very edge of the shelf.

Mr. Klein: Q. Did you observe the condition existing in the storeroom on the other side of the peepholes?

A. I don't understand that question.

(Testimony of Irving Gubin.)

Q. Did you observe the condition existing in the storeroom on the other side of this wall?

A. Yes.

Q. Did you observe the peepholes there?

A. Yes, I did.

Q. Would you say that a man sitting in a chair like you are sitting in now could look through those peepholes?

Mr. Davis: I object to that, your Honor. That is clearly not expert testimony. That is merely the height of a hole.

The Court: I will sustain the objection to that question. That calls for an opinion and conclusion of the witness.

Mr. Klein: That is all. Take the witness. [115]

#### Cross-Examination

By Mr. Davis:

Q. You say you measured these holes last night?

A. What was that, sir?

Q. Did you say you measured these holes last night?

A. I only measured the distance below the shelf.

Q. You did not measure the size of the hole?

A. No, it is very difficult to measure the hole because there is a screen in front of it. I have it here somewheres. The holes are approximately three inches square. You know they are just chopped in. But the bottom seems to lie across.

Q. . Are they all the same size?

A. They are all practically the same size.



(Testimony of Irving Gubin.)

Q. Isn't it a fact that the first hole in the store-room is 2 inches by 8 inches, approximately?

A. Is 2 inches by 8 inches?

Q. Yes.

A. What would that be? No. 3 hole?

Q. That would be No. 3 hole, yes?

A. I don't know whether it was 2 by 8 inches.

Q. Isn't it a fact that No. 3 is three and a quarter by eight inches approximately?

A. You mean eight inches high?

Q. Yes. A. I didn't see it that way. [116]

Q. And No. 4—No. 5 is three and a quarter by eight inches, approximately?

A. I didn't see it that way.

Q. And isn't No. 6 three and a quarter by three and a half inches, approximately?

A. That is about it. They all look about three by three to me.

Q. So it is your opinion all those peepholes were the same size approximately? A. Yes, sir.

Q. 1 and 2,—you did not look through those?

A. No, there is nothing there.

Q. You mean there is nothing there now that you could see?

A. You could see where the wall had been covered.

Mr. Davis: That is all.

### Redirect Examination

By Mr. Klein:

Q. Just one other question that I overlooked.

(Testimony of Irving Gubin.)

Calling your attention, Mr. Gubin, to peepholes 1 and 2 that are outside the liquor room—do you understand?      A. Yes, sir.

Q. How far from this wall was peephole No. 1?

A. Peephole No. 1 was 28 inches in a down direction and it was 41 inches high.

Q. Peephole No. 2?

A. I couldn't find that one at all. [117]

Q. Did you measure the door of the liquor storage room?

A. The door extends—well, it starts 57½ inches from the right corner towards the left, and it opens—it is 35½ inches wide and it opens in, as shown on this sketch—opens out.

Q. It opens out? How long is that door?

A. It is 35½ inches wide.

Q. How high?

A. The door just comes within a couple of inches of the top and bottom. The room is 71 inches high. So it just barely clears it.

Q. Is that a wooden door?

A. It looked to me like—I think it was about three inches thick.

Q. Are there any glass panels in that door?

A. No, the door is solid wood.

Mr. Klein: Thank you.

Mr. Davis: That is all.

JOSEPH PITTA

the defendant herein; called as a witness on his own behalf; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court and jury.

A. Joe Pitta. [118]

Direct Examination

By Mr. Klein:

Q. Mr. Pitta, where do you live?

A. 4258 Balfour Avenue, Oakland.

Q. What is your business?

A. I have been taking care of my dad's business and I have been in the bar business and restaurant business.

Q. Where?

A. In Oakland, Lake Tahoe—mostly in Oakland.

Q. When you say your dad's business, what do you refer to? Ranching properties?

A. Yes.

Q. Mr. Pitta, have you ever been convicted of a felony?      A. Once.

Q. When was that? In Los Angeles?

A. In San Diego.

Q. When was that?

A. In 1940, I believe.

Q. Do you know the Star Dust Bar?

A. Yes.

Q. Were you in the Star Dust Bar on January 10, 1946, at ten-thirty at night?

A. Well, no, I don't think I was in there that



(Testimony of Joseph Pitta.)

late at night. I don't know whether I was there January 10.

Q. I am asking you whether you were there at ten-thirty at night on January 10? [119]

A. No, I don't—no.

Q. How can you say you were not there on January 10 at ten-thirty?

A. I always—when I went there, I went there to exchange liquor, to trade liquor off with the Bruno brothers, and it was always early in the evening, sometimes in the afternoon.

Q. Will you be good enough, Mr. Pitta, to speak up so that each one of the ladies and gentlemen of the Jury may hear you? I am going to ask you this: Were you ever in the Star Dust Bar at ten-thirty at night?

A. No, not at ten—no.

Q. How many times have you been in the Star Dust Bar altogether, about?

A. Oh, I would say, two or three or four times.

Q. And covering what period of time?

A. A couple of years.

Q. Covering a couple of years.

You may take the witness.

### Cross-Examination

By Mr. Davis:

Q. I am merely going to ask you one question, Mr. Pitta: Isn't it a fact that on the night of January 10, 1946, that you went into the Star Dust Bar and went with Vince Bruno down into the liquor

(Testimony of Joseph Pitta.)

room, and that there you and Vince Bruno used a bindle of heroin?           A. No, sir. [120]

Q. You never had possession of that bindle of heroin at that time?

A. No, sir, I never seen one.

Mr. Davis: That is all.

Mr. Klein: Thank you.

The defendant rests, if it please the Court.

The Court: The Government rests?

Mr. Davis: Yes, your Honor.

(Thereupon Mr. Davis and Mr. Klein made their arguments respectively to the Jury, after which the Court instructed the Jury as follows:)

The Court: The record will show that the jurors are all present.

Ladies and gentlemen of the Jury, you have heard the evidence in this case and listened to the statements of the attorneys. It is now the duty of the Court to briefly outline to you the rules of law that are applicable to this case and which you should follow in performing your duties. The Jury and the Judge in a Federal Court are are, in a way of speaking, a team. We each have a part to play in the administration of justice. While our functions are somewhat different, when put together they are essential as a whole in the judicial process. The Jury decides the question of fact. That [121] is exclusively the power and the province of the Jury. With that function the Court does not and should

not interfere. You are not to assume from anything that the Court may have said during the course of the trial of the case, in ruling upon matters of evidence or objection of counsel or perhaps in propounding questions to the witnesses, that the Court was intending to express any opinion as to the guilt or innocence of the defendant. Whatever rulings the Court may have made, whatever statements the Court may have made in that connection were not intended in any manner to indicate an opinion by the Court as to what your verdict should be, but such statements on the part of the Court were only in pursuance of the Court's power and, indeed, its duty to supervise the trial of the case and to expedite it.

The Judge has the exclusive function of telling the Jury what the law is, and the Jury must accept the Judge's statement of the law. Sometimes jurors do not like a law. They think it should be different. But that may not enter into your consideration of this case. You must take the law as the Judge gives it to you, and in like manner the Judge must and should accept your judgment as to the question of fact, and should not interfere with your power to decide the facts in the case.

In your deliberations it is your duty to exclude entirely any question of sympathy or any prejudice. You are also not [122] concerned with the matter of punishment in the event a verdict of guilty should be found in this case. The matter of punishment is solely a matter for the Court in the event of a verdict of guilty.

There are some few rules that are applicable to



criminal trials in the Federal Courts that may assist you in weighing the evidence in this case. In the first place, you must, as I told you when you were impaneled, not to have in your minds any presumption or feeling that, because the defendant was indicted, he is guilty. As I explained to you, the presumption in our law is a presumption of innocence, and that obtains and continues until such time as you are convinced by the evidence beyond a reasonable doubt of the guilt of the defendant. There is a burden upon the part of the Government to prove the guilt of the defendant beyond a reasonable doubt.

Now, we speak of reasonable doubt. Attorneys in their arguments have commented upon that. I will give you the definition that I usually give to jurors as to what is meant by a reasonable doubt. It really is what the term implies: it is a doubt that is founded upon reason. It does not mean every conceivable kind of doubt that one may have. It does not mean a doubt, for example, that is imaginary, fanciful, captious or speculative in character. It means an honest doubt that appeals to reason and is founded upon reason. If after considering all the evidence in this case you have such a [123] doubt in your mind as would cause you or any other prudent man or woman to pause or hesitate before acting in some grave transaction of your own life, then you would have such a doubt as the law contemplates to be a reasonable doubt. This rule of reasonable doubt applies to every element of the offense that is charged.

You decide whether you believe the witnesses. That is your part. You decide what weight should

be attached to the testimony of the respective witnesses. We start out with the presumption that a witness speaks the truth. That is, when a man takes this chair and starts to testify, there is the presumption that he is going to tell the truth. However, that presumption with which we start out may be negatived by several things. It may be negatived by the manner in which the witness testifies, by the character of his testimony, by contradictory evidence, by his motives, by evidence as to his character and reputation for truth, honesty and integrity, or by his criminal record, if any, that is, whether or not he has been convicted of a felony. In passing upon the credibility of the various witnesses, it is your right to accept the whole or any part of the testimony of a witness, or to discard or reject the whole or any part of the testimony of a witness. If it appears to you that a witness has testified falsely in any material respect, you are entitled to distrust his testimony in other particulars. In that event you [124] are free to reject all of the witness' testimony.

You may consider the following factors in determining how much weight you want to give to the testimony of the witness: you may consider the circumstances under which the witness testifies, his demeanor and manner on the stand, his intelligence, the connection or relationship which he bears to the Government or to the defendant, the manner in which he might be affected by your verdict, the extent to which he is contradicted or corroborated by other evidence, if at all, and any other matter that is disclosed by the evidence which reasonably

sheds any light upon the credibility of the witness.

It is your duty to disregard any testimony out or any testimony to which an objection has been sustained. You may not consider any exhibits which, though offered, have not been received in evidence.

The attorneys have argued this case, as is their right, and indeed their duty. If you find that there is any discrepancy or variance between the facts testified to by the witness and the facts as stated to you by the attorneys in their arguments, you will discard the statement of facts given by the attorneys and consider only the statement of facts as you recall it, given by the witnesses or produced in the evidence in the case. Now, you may find some discrepancies or inconsistencies in the testimony of the witness, or perhaps between the testimony of different witnesses. If such discrepancies [125] or inconsistencies are not material and do not affect the true issues of the case, and if they do not reasonably bear upon the guilt or innocence of the defendant, you should not waste your time in considering it.

It, of course, is your duty, despite these various rules that the Court gives you, to use your good sense, just as you would in acting upon vital and important matters pertaining to your own affairs when you come to a decision in this case. You should resolve the facts of the case according to calm and deliberate judgment and in the light of your own knowledge of the natural tendencies and propensities of human beings.

You must carry in your mind that the defendant is entitled to any reasonable doubt that you may



have in your minds. At the same time you should remember if you have no such doubt the Government is entitled to a verdict. In this case the defendant has testified in his own behalf. That being so, you will determine his credibility according to the same standards applied to any other witnesses. I have already pointed out some of them to you. You may also consider in this connection the interest the defendant may have in the case, his hopes and his fears, what he has to gain or lose as a result of your verdict, and you may, in weighing his testimony, take into account, as testified to, that he has been heretofore convicted of a felony. [126]

The case before you, ladies and gentleman, is a simple issue of fact. I do not mean to imply by that statement that it is not important because it may be simple. The case, of course, is important. It is important to the Government of the United States and of course it is most important to the defendant in the case. You have already been told that the charge against the defendant, Joseph Pitta, is that on the 10th day of January, 1946, in San Francisco, he fraudulently and knowingly concealed and facilitated the concealment of a certain quantity and derivative and preparation of morphine, to-wit, a lot of heroin in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as the said defendant then and there knew.

That charge arises out of, and is framed in part, in the language of a Federal statute known as the Jones-Miller Act. In substance that law provides

that if a person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction contrary to law, or assists in so doing, or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any such narcotic drug, after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon [127] conviction be punished as provided in the statute.

Heroin, which is the particular drug described in the indictment, is a narcotic drug as referred to in the Jones-Miller Act, the substance of which I have just given you.

This same law further provides that where there is a charge of violation of the Jones-Miller Act filed, a trial had on that charge, and the defendant is shown to have, or have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains the possession to the satisfaction of the **Jury**. Therefore, if you are satisfied beyond a reasonable doubt by the evidence in this case that the defendant had possession of this narcotic drug, and he has not explained that possession to your satisfaction, you may find him guilty of violation of this statute.

Possession is sufficient, provided you are convinced beyond a reasonable doubt that the defendant was in possession, to satisfy the requirements of proof under the Jones-Miller Act, which I have read to you. Likewise if you are satisfied beyond

a reasonable doubt that the defendant was in possession of the narcotics referred to and described in the indictment, you are at liberty to infer that the narcotics had been to the knowledge of the defendant imported and brought into the United States contrary to law. In other words, if there is proof beyond a reasonable doubt of possession by the defendant, [128] and no satisfactory explanation by the defendant, that is, satisfactory to the Jury, the Jury is under such circumstances justified in finding a verdict of guilty. That means that the only question before the Jury in this case is this: the only question before the Jury is a question which arises out of this conflict: the narcotic agents of the United States have testified that they saw the defendant in the possession of the narcotic here in question. The defendant has denied that. If you are satisfied beyond a reasonable doubt that the narcotic agents have told the truth, you may bring in a verdict of guilty. If, on the contrary, you are not satisfied beyond a reasonable doubt that they have told the truth, you may then bring in a verdict of not guilty.

If you can conscientiously do so, ladies and gentlemen, you are expected to agree upon a verdict. You should freely consult with one another in the jury room. The defendant is entitled to the independent judgment of each of you on the question of his guilt or innocence. However, as I have said, you should freely discuss the matter in the jury room between one another. If any one of you should be convinced that your view of the case is erroneous,



you should not be stubborn and you should not hesitate to abandon your own view under such circumstances. On the other hand, it is entirely proper—in fact, your duty and your province—to adhere to your own view if after a full exchange of ideas you still believe you [129] are right.

If it should become necessary for the Jury to communicate with the Court during its deliberations or upon its return to court with respect to any matter connected with the trial of this case, you should not indicate to the Court in any manner how the Jury stands numerically or otherwise on the question of the guilt or innocence of the defendant. This caution the Jury should observe at all times after the case is submitted to it until the Jury has reached a verdict. When all of you agree to a verdict, it is the verdict of the Jury. In other words, your verdict must be unanimous. After you have deliberated, and if you have reached a verdict, the verdict should not be returned to the courtroom unless all of you have agreed to it.

When you retire to deliberate, you may select one of your number as foreman or forelady, as the case may be, and he or she will represent you in your further conduct of this case in this courtroom and will represent you as spokesman or spokeswoman with respect to any matters that require your further communicating with the Court.

We have prepared a form of verdict for you. It reads as follows:

“We the Jury find as to the defendant at

the bar as follows: ..... as to Count 23 of the indictment.”

In the blank space you will write the word “Guilty,” [130] or “Not Guilty,” in accordance with your decision. This form of verdict is prepared for your convenience and is not intended to indicate in any way what your verdict should be.

Does either side wish to note any exceptions to the charge?

Mr. Davis: No exceptions.

Mr. Klein: None at all, your Honor.

The Court: Ladies and gentlemen, you may now retire to consider your verdict.

(Thereupon, the Jury at 1:50 p.m. retired from the courtroom to consider their verdict.

(Upon their return to the courtroom the Jury announced their verdict as “Guilty.” The jurors were polled and each answered that the verdict was his or her verdict.) [131]

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[Endorsed]: No. 11619. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Pitta, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed June 3, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 11619

JOSEPH PITTA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL AND  
DESIGNATION OF PARTS OF RECORDS  
NECESSARY FOR THE CONSIDERATION  
THEREOF

Now comes the appellant in the above-entitled appeal and presents his statement of points on appeal and designates the portion of the records that he considers necessary for the consideration thereof, to-wit:

STATEMENT OF POINTS ON APPEAL

I.

That the Court erred in permitting the Assistant United States Attorney, over the objection of the appellant, to state to the jury that another defendant allegedly involved in the transaction for which defendant was convicted had been convicted in another portion of the case.

II.

That the Court erred in admitting in evidence Government's Exhibits 1 and 2, during the testi-



mony of Elmer A. Briscoe, the admission of which were objected to upon the ground that they were incompetent, irrelevant and immaterial.

### III.

That the Court erred in denying the defendant's motion for a verdict of not guilty and/or a judgment of acquittal at the conclusion of the Government's case, which motion was made substantially

(a) upon the ground that there was a variance between the charge and the proof;

(b) that there was a total lack of evidence to sustain the charge that the defendant did "fraudulently and knowingly conceal and/or facilitate the concealment of a certain quantity of a derivative or preparation of morphine, to-wit, one lot of heroin in No. 1 particularly described as one bindle of heroin which had been imported into the United States contrary to law;"

(c) that the Court erred in denying defendant's motion for a verdict of not guilty and/or a judgment of acquittal upon the ground that the evidence was insufficient as a matter of law to sustain a verdict of guilty.

### IV.

That the defendant was prejudiced during the trial of said cause by being compelled to go to trial on an indictment charging in fifty-six counts numerous and many defendants involved in narcotic transactions unrelated and unconnected with the appellant.

## V.

That the Court erred to the substantial prejudice of the appellant in giving to the jury certain instructions which were in substance as follows:

(a) “Therefore, if you are satisfied beyond a reasonable doubt by the evidence in this case that the defendant had possession of this narcotic drug and he has not explained that possession to your satisfaction you may find him guilty of a violation of the statute.

(b) “That means, that the only question before the jury in this case; the only question before the jury is a question which arises out of the conflict. The Narcotic Agents have testified that they saw defendant in the possession of the narcotic heroin in question. The defendant has denied that. If you are satisfied beyond a reasonable doubt that the Narcotic Agents have told the truth you may bring in a verdict of guilty. If, on the contrary, you are not satisfied beyond a reasonable doubt that they have told the truth you may then bring in a verdict of not guilty.”

## VI.

That this Court erred in denying the defendant's motion for a new trial.

## VII.

That the Court erred in denying defendant's motion in arrest of judgment.

DESIGNATION OF PORTIONS OF RECORDS  
DEEMED NECESSARY FOR CONSIDER-  
ATION ON APPEAL

The entire Clerk's Transcript of Record.

The entire Reporter's Transcript of Proceedings.

All Exhibits.

(Original exhibits to be used in consideration of this appeal without reproduction in the record.)

The foregoing statement of points on appeal and designation of portions of the records which appellant deems necessary for the consideration of said appeal is respectfully presented and filed in compliance with Rule 19, Subdivision 6, of the Rules of Procedure of the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ JAMES B. O'CONNOR,  
Attorney for Appellant.

[Endorsed]: Filed June 17, 1947.

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[Title of Circuit Court of Appeals and Cause.]

STIPULATION DISPENSING WITH PRINT-  
ING OF ORIGINAL EXHIBITS

It Is Hereby Stipulated by and between counsel for appellant and counsel for appellee that the original exhibits to be used on the consideration of



this appeal need not be reproduced in the record herein.

Dated: June 17th, 1947.

/s/ FRANK J. HENNESSY,

/s/ JAMES D. DAVIS,

Attorneys for Appellee.

/s/ JAMES B. O'CONNOR,

Attorney for Appellant.

[Endorsed]: Filed June 18, 1947.

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[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH PRINTING  
OF ORIGINAL EXHIBITS

Upon consideration of the stipulation of counsel for the respective parties hereto that the original exhibits in the above-entitled case need not be printed as part of the printed transcript of record but may be considered by this Court in their original form; and good cause appearing therefor,

It is Hereby Ordered that the said application be and it is hereby granted and that the original exhibits in this cause need not be printed as part of the printed transcript but may be considered in their original form.

Dated: June 18, 1947.

/s/ FRANCIS A. GARRECHT,

United States Circuit Court  
Judge.

[Endorsed]: Filed June 18, 1947.

